

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719
5 Plaintiff, -
6 v. - Toledo, Ohio
7 - October 21, 2009
8 - Sentencing
9 -
10 MARWAN EL-HINDI, et al., -
11 Defendants. -
12 -----

13 TRANSCRIPT OF SENTENCING
14 BEFORE THE HONORABLE JAMES G. CARR
15 UNITED STATES DISTRICT CHIEF JUDGE

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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

10:52:16 1 (Commenced at 10:48 a.m.)

10:52:16 2 THE CLERK: 3:06-719, United States v.
10:52:23 3 Marwan El-Hindi. Matter called for sentencing.

10:52:25 4 THE COURT: The record should show the
10:52:26 5 defendant is present in court with his attorneys, Mr.
10:52:29 6 Charles Boss and Mr. Steve Hartman. The government is
10:52:32 7 represented by Mr. Tom Getz and Mr. Justin Herdman
10:52:37 8 and --

10:52:37 9 MR. BROWN: Duncan Brown for the United
10:52:41 10 States.

10:52:41 11 THE COURT: And Mr. Sofer and Mr.
10:52:44 12 Teresinski.

10:52:44 13 MR. SOFER: Good morning, Your Honor.

10:52:48 14 THE COURT: Mr. Herdman, I understand you'll
10:52:54 15 be -- you have received and reviewed the presentence
10:52:57 16 report?

10:53:06 17 MR. GETZ: Your Honor, Tom Getz. I'll be
10:53:08 18 representing the government in the sentencing for Mr.
10:53:10 19 El-Hindi.

10:53:10 20 THE COURT: I misunderstood. Have you
10:53:12 21 received and reviewed the presentence report?

10:53:14 22 MR. GETZ: We have, Your Honor. Any
10:53:15 23 objections that we have have been forwarded to the
10:53:18 24 probation department. I believe they've all been
10:53:20 25 resolved.

10:53:21 1 THE COURT: And Mr. Boss and Mr. Hartman,
10:53:23 2 have you received and reviewed the presentence report?

10:53:27 3 MR. HARTMAN: We have, Your Honor.

10:53:28 4 THE COURT: Mr. El-Hindi, have you read the
10:53:33 5 presentence report?

10:53:37 6 THE DEFENDANT: Yes, I have.

10:53:38 7 THE COURT: Did you understand what it says
10:53:40 8 and what it means?

10:53:41 9 THE DEFENDANT: Yes, I did.

10:53:42 10 THE COURT: And are you satisfied that your
10:53:46 11 attorneys have taken enough time to go over the report
10:53:49 12 with you and discuss it with you and to answer any
10:53:53 13 questions about it that you may have had?

10:53:57 14 THE DEFENDANT: Yes, they did.

10:53:58 15 THE COURT: And are you prepared to proceed
10:54:00 16 with sentencing this morning?

10:54:02 17 THE DEFENDANT: Yes, I am.

10:54:04 18 THE COURT: And are you confident that your
10:54:06 19 attorneys are also prepared to proceed with sentencing
10:54:09 20 as well?

10:54:10 21 THE DEFENDANT: I hope so.

10:54:12 22 THE COURT: But more than hope.

10:54:15 23 THE DEFENDANT: Yes.

10:54:16 24 THE COURT: They're as ready to go as you
10:54:18 25 think they can be?

10:54:19 1 THE DEFENDANT: Yes.

10:54:20 2 THE COURT: Mr. Getz?

10:54:21 3 MR. GETZ: Thank you, Your Honor. Your
10:54:32 4 Honor, the government is aware of some time constraints.

10:54:36 5 THE COURT: I apologize. I'm all set.

10:54:56 6 MR. GETZ: Thank you, Your Honor. As I

10:54:59 7 say, we are aware, cognizant there are some time

10:55:03 8 constraints here. We're also aware from the Court's

10:55:05 9 comments that the Court has reviewed the parties'

10:55:09 10 sentencing memoranda. So --

10:55:11 11 THE COURT: Just for the record, there are

10:55:13 12 no outstanding objections by either party.

10:55:16 13 MR. GETZ: None from the government, Your

10:55:17 14 Honor.

10:55:17 15 MR. HARTMAN: We have no additional

10:55:19 16 objections. We would renew all those that we previously

10:55:22 17 submitted.

10:55:22 18 THE COURT: Of course. I'm going to make

10:55:24 19 the same decision on the loose end about criminal

10:55:28 20 history on this defendant as well. I'll simply accept

10:55:32 21 the criminal history as computed in the guidelines.

10:55:40 22 MR. GETZ: For this sentencing hearing,

10:55:42 23 because I know that the Court is aware of the positions

10:55:45 24 the government has taken in its memorandum, I'm not

10:55:48 25 going to be playing a lot of links or a lot of clips,

10:55:55 1 but maybe one or two if necessary. However, I would
10:55:57 2 ask the Court that if at any time in any of the items
10:56:01 3 that I make reference to the Court would like to take
10:56:04 4 time to see the link from our memorandum or see that
10:56:08 5 item of evidence, I would ask the Court to please so
10:56:11 6 advise, and we'll make sure that we bring it up.

10:56:14 7 THE COURT: Of course.

10:56:15 8 MR. GETZ: I believe that the Court will
10:56:16 9 recall most of these that I'm going to be referencing.

10:56:20 10 I do also have some items that I will be --
10:56:24 11 five or six items I'll be showing the Court during the
10:56:28 12 course of my remarks. However, I would like to say
10:56:31 13 that because the presentation might be somewhat shorter
10:56:34 14 than the presentation the government made in the Amawi
10:56:36 15 sentencing, I would not want the Court to conclude from
10:56:46 16 that shorter presentation that the government is in any
10:56:49 17 way making any concession that this defendant is any
10:56:52 18 less dangerous or that his crimes are any less serious
10:56:55 19 than Mr. Amawi or Mr. Mazloun.

10:56:57 20 THE COURT: I understand that.

10:57:00 21 MR. GETZ: This defendant is convicted --

10:57:02 22 THE COURT: Certainly. To the extent that
10:57:04 23 you think in the course of making sort of a prefatory or
10:57:07 24 what I consider to be sort of generally applicable
10:57:11 25 remarks, if there's something that occurs to you that

10:57:16 1 you haven't already mentioned in the course of these
10:57:20 2 proceedings, you say, Judge, wait a minute, with regard
10:57:23 3 to this defendant, that's not quite so; by all means,
10:57:29 4 let's not cast the stone. You're more than welcome to
10:57:37 5 say, Judge, you said earlier this, but you really should
10:57:41 6 be thinking that. So certainly whatever objections you
10:57:50 7 make along the way are deemed applicable to this as
10:57:54 8 well. Go ahead.

10:57:55 9 MR. GETZ: As the Court is aware, in the --
10:57:59 10 what we'll refer to as the terrorism case, this
10:58:02 11 defendant, of course, was convicted of the same serious
10:58:04 12 offenses as his co-defendant, Mr. Amawi. He also was
10:58:09 13 found guilty by this Court in a fraud-related offense,
10:58:15 14 fraud-related offenses in a separate trial. These
10:58:17 15 involve defendant's activity, as the Court will recall,
10:58:20 16 in forming an alleged nonprofit corporation in his
10:58:23 17 mother's name and then using the shell of that
10:58:26 18 corporation after altering the name a little bit to
10:58:29 19 apply for a government grant based on additional false
10:58:33 20 representations.

10:58:34 21 Now, I know it's not necessary for us to
10:58:36 22 revisit all the facts of that case. It wasn't a
10:58:39 23 lengthy trial. But there are a few facts that are
10:58:43 24 pertinent to the defendant's character and
10:58:45 25 characteristics of all of his offenses that come out of

10:58:48 1 that. So I want to start there. First of all, I
10:58:51 2 think it's important to note that that activity had
10:58:53 3 nothing at all to do with Darren Griffin. It was prior
10:58:57 4 to his involvement with Darren Griffin. It also had
10:59:00 5 nothing to do with any federal undercover investigation.
10:59:03 6 The defendant devised and carried out this scheme on his
10:59:07 7 own prior to any involvement with Darren Griffin or the
10:59:09 8 federal government.

10:59:11 9 First, to carry it out and discreet himself,
10:59:16 10 he used his mother's identification. Also the Court
10:59:18 11 will recall the testimony of the defendant's second
10:59:21 12 wife, Nadia El-Hindi, that after the defendant obtained
10:59:25 13 the government grant funds, he used her name without her
10:59:28 14 knowledge and consent on the check so he could divert
10:59:32 15 funds to his own use. One of the exhibits, Your Honor,
10:59:35 16 in the trial, as the Court will recall --

10:59:40 17 THE COURT: I suppose technically that's a
10:59:45 18 forgery if she was the payee and he signed her name.

10:59:52 19 MR. GETZ: Yes, Your Honor. And I would
10:59:55 20 remind the Court that I don't know if there was any
10:59:57 21 evidence that he was the person who signed her name to
10:59:59 22 it, but we do know that he was the person who negotiated
11:00:03 23 the check, and we also know he was the person who
11:00:05 24 controlled this particular account.

11:00:08 25 THE COURT: Also doing so was necessary to

11:00:10 1 accomplish the objectives of the fraud, which was to
11:00:13 2 stick money in his pocket.

11:00:15 3 MR. GETZ: That's correct, Your Honor.
11:00:17 4 That was in the trial that was case Number 3:07-CR-074.
11:00:24 5 That was Exhibit Number 10C. And I would suggest to
11:00:40 6 the Court that the manner which he carried out this
11:00:43 7 scheme says much more about him than just that he's a
11:00:46 8 con man and a thief. It's an indication of the extent
11:00:49 9 to which he is a user and a manipulator.

11:00:52 10 Further illustrations of that was from Count
11:00:55 11 9 of the indictment and what we'll call the terrorism
11:00:59 12 case. That was a count that was severed from that case
11:01:03 13 in that trial, and later we also had that dismissed
11:01:06 14 after the convictions. But that was another fraudulent
11:01:10 15 scheme that was devised by this defendant. However,
11:01:13 16 this one did involve Darren Griffin. And Darren
11:01:16 17 Griffin was involved in this because the defendant
11:01:20 18 solicited Darren Griffin to participate in this
11:01:23 19 particular fraud. What he did was he specifically
11:01:26 20 asked Darren Griffin to and used Darren Griffin and his
11:01:32 21 own youngest children to defraud the government, to
11:01:35 22 cheat the government by having Griffin falsely claim to
11:01:38 23 be the child care provider for his two youngest
11:01:41 24 children. And on February 11, the defendant had Darren
11:01:46 25 Griffin sign a letter to that effect given to the Lucas

11:01:50 1 Metropolitan Housing Authority that falsely claimed that
11:01:54 2 the defendant was paying Darren Griffin \$175 per week to
11:01:59 3 watch his two youngest children. I have that letter
11:02:04 4 signed by Darren Griffin marked as government's
11:02:09 5 sentencing Exhibit Number 1. I would ask that to be
11:02:14 6 admitted for purposes of this sentencing hearing, Your
11:02:17 7 Honor.

11:02:17 8 THE COURT: Any objection?

11:02:22 9 MR. HARTMAN: Yeah, I object; it's not
11:02:24 10 authenticated.

11:02:25 11 THE COURT: Overruled. Any reason to
11:02:27 12 believe it's not true and accurate, a true and correct
11:02:30 13 and accurate copy of what it purports to be?

11:02:32 14 MR. HARTMAN: Well, only that we have no way
11:02:36 15 of knowing if that's Mr. Griffin's signature. I don't
11:02:40 16 know who signed this.

11:02:43 17 THE COURT: I don't see any reason to doubt
11:02:45 18 its authenticity. If some reason develops, call it to
11:02:49 19 my attention, and I'll act accordingly. In any event,
11:02:53 20 this is a sentencing proceeding. The rules of evidence
11:02:56 21 don't technically apply according to my understanding.
11:03:00 22 Your objection is noted.

11:03:02 23 MR. GETZ: Let me mention to the Court,
11:03:03 24 you'll note on the letter it is stamped "received and
11:03:06 25 initialed," stamped received on February 17, 2004. So

11:03:11 1 about six days after the date on the letter by Lucas
11:03:15 2 Metropolitan Housing Authority. In addition --

11:03:19 3 THE COURT: That's okay.

11:03:21 4 MR. GETZ: Well, Your Honor, I have some
11:03:23 5 additional exhibits that are pertinent to this
11:03:25 6 particular letter and the point I want to make. One of
11:03:28 7 them is what I'll mark as Government Sentencing Exhibit
11:03:33 8 Number 2, and also Sentencing Exhibit Number 3. These
11:03:35 9 are documents from the Lucas Metropolitan Housing
11:03:40 10 Authority. I will add, Your Honor, for the record these
11:03:42 11 documents were provided on discovery to defense some
11:03:46 12 time ago. And these would have been pertinent to Count
11:03:52 13 9 had that count proceeded to trial. What those
11:04:01 14 documents show is that as a result of the claim of --
11:04:09 15 the false claim of child care being provided, the net
11:04:13 16 result of that was -- not only was the defendant
11:04:15 17 obtaining free rent, but he actually received a monthly
11:04:21 18 stipend of \$64 a month, which is represented in the
11:04:28 19 adjusted tenant rent as a negative \$64. You'll note on
11:04:31 20 both of these documents the defendant's signature
11:04:34 21 appears.

11:04:35 22 And turning the Court's attention
11:04:40 23 specifically to Government 2, you'll note in the box on
11:04:43 24 the top left-hand side it says "allowances." There's
11:04:47 25 an annual child care expense allowance of \$9,100. And I

11:04:53 1 think the Court will find that multiplying \$175, as
11:04:57 2 represented in the letter, by 52 weeks, you will find
11:05:01 3 that is \$9,100. So this letter was, in fact, used in
11:05:06 4 order for the defendant to obtain a benefit and again
11:05:10 5 cheat the government, not only using Darren Griffin as
11:05:13 6 an accomplice, but using his own two youngest children
11:05:16 7 as the basis for that claim.

11:05:22 8 So it's clear from the defendant's fraud
11:05:25 9 schemes that he uses others to further his goals. But
11:05:28 10 the use and manipulation of other individuals is not
11:05:30 11 just limited to his fraud activities; the defendant has
11:05:34 12 used his position and his recognition as a mentor, a
11:05:38 13 religious elder to the younger Muslims and other
11:05:45 14 associates that he's come into contact with as
11:05:49 15 demonstrated, and as I'll point out to the Court, and
11:05:53 16 particularly to share and spread his expressed hatred
11:05:57 17 for Israel and his anger at the United States for
11:06:00 18 supporting Israel.

11:06:03 19 In September there was evidence from the
11:06:05 20 trial testimony of Darren Griffin that in September of
11:06:09 21 2002, so very early on in their relationship, and prior
11:06:13 22 to the beginning of the Iraq war, the defendant asked
11:06:16 23 Griffin about kidnapping Israeli soldiers and U.S.
11:06:21 24 politicians. We reference that in our memo on page 37.

11:06:31 25 THE COURT: That was before Amawi was in the

11:06:33 1 picture; am I correct?

11:06:34 2 MR. GETZ: I'm sorry, Your Honor?

11:06:35 3 THE COURT: That was before Amawi was in the
11:06:37 4 picture?

11:06:37 5 MR. GETZ: That would be correct, Your
11:06:44 6 Honor.

11:06:44 7 THE COURT: What was the context of that?
11:06:52 8 Do you recall? What was the setting for that
11:06:54 9 conversation?

11:06:59 10 MR. GETZ: Let me confer.

11:07:01 11 (Discussion had off the record.)

11:07:01 12 THE COURT: What was sort of the occasion
11:07:03 13 that brought that about?

11:07:06 14 MR. GETZ: Well, Your Honor, it was in
11:07:07 15 September of 2002, just prior to the beginning of the
11:07:11 16 war. We can pull up the exact date.

11:07:19 17 THE COURT: And they can interrupt and tell
11:07:21 18 me --

11:07:21 19 MR. GETZ: Your Honor, again, I would
11:07:22 20 reference that this was from testimony of Darren
11:07:26 21 Griffin. I'm not certain if this is a recorded
11:07:29 22 conversation.

11:07:30 23 THE COURT: That's okay.

11:07:33 24 MR. GETZ: In response to some of the
11:07:35 25 concerns of the Court expressed during the earlier

11:07:37 1 sentencing hearing, I would just like to remind the
11:07:41 2 Court that the evidence showed that the defendant
11:07:45 3 continued to upgrade his computer video and amass his
11:07:50 4 own personal jihad library as this investigation
11:07:56 5 continued. And we showed from the evidence that as
11:07:59 6 late as January 2 of 2006, so roughly a month, slightly
11:08:04 7 less than a month and a half before his arrest, he was
11:08:10 8 still accumulating documents and saving them. In
11:08:14 9 addition, we know from the evidence that the defendant
11:08:16 10 totally independent of Darren Griffin was already
11:08:18 11 registered on the Ekhlalas forum. And our memo again --

11:08:24 12 THE COURT: Can you spell that for Tracy,
11:08:26 13 please?

11:08:26 14 MR. GETZ: Yes, Your Honor. That's
11:08:30 15 E-K-H-L-A-S-S.

11:08:33 16 MR. HERDMAN: E-K-H-L-A-A-S.

11:08:45 17 MR. GETZ: On that site, as the evidence
11:08:47 18 shows and we make reference in our memorandum on page 46
11:08:51 19 and 47, the defendant posted a number of violent and
11:08:54 20 hateful statements. One of them, for example, is asking
11:08:58 21 God to kill Jews and Americans, and he also repeatedly
11:09:03 22 proclaimed in postings that, "I am a terrorist."

11:09:07 23 In addition, on the following page, 48 and
11:09:10 24 49 of our memo --

11:09:13 25 MR. BOSS: Your Honor, could we have that

11:09:15 1 site again, please?

11:09:16 2 MR. GETZ: The link's in our memorandum, and
11:09:19 3 the descriptions are on pages 46 and 47 of our
11:09:24 4 sentencing memo.

11:09:26 5 MR. BOSS: Can you tell us what the evidence
11:09:27 6 was specifically?

11:09:29 7 MR. HARTMAN: There was no evidence of that
11:09:30 8 that came out at trial.

11:09:34 9 MR. HERDMAN: That's true. Well, it's
11:09:36 10 quite extensive in our memo. There's a whole paragraph
11:09:39 11 devoted to this. I could walk the Court and counsel
11:09:42 12 through it if you gave me a minute. It's pretty simple
11:09:45 13 the way that we were able to determine this. With the
11:09:49 14 indulgence of the Court, I can do so.

11:09:52 15 THE COURT: Go ahead. You said 46 and 47,
11:09:56 16 Mr. Getz, or 36 and 37? You may have a different
11:10:03 17 version of it because I created an Adobe format. The
11:10:08 18 pagination may be off a little bit.

11:10:09 19 I've got it.

11:10:11 20 MR. HERDMAN: Your Honor, I'm sure you
11:10:14 21 remember the testimony from Evan Kohlmann related to --

11:10:19 22 THE COURT: I do. And nature of whatever
11:10:21 23 you call it, web page forum.

11:10:25 24 MR. HERDMAN: I'm sure you remember the
11:10:27 25 testimony from Evan Kohlmann; he had the entire page

11:10:32 1 from Ekhlaas. You remember all the testimony about
11:10:34 2 cookies that came in. There was a cookie -- I see
11:10:42 3 Tracy smiling, before lunch.

11:10:44 4 THE COURT: Still is.

11:10:45 5 MR. HARTMAN: This, I have to object because
11:10:47 6 we need -- we have to have expert testimony. We didn't
11:10:50 7 have a chance to have an expert to refute the testimony.
11:10:55 8 This is beyond what we can just determine.

11:10:57 9 THE COURT: Well, I'm going to overrule that
11:10:59 10 for two reasons. Number one, at least the document was
11:11:07 11 filed October 5. Basically Mr. Herdman is putting some
11:11:14 12 legs underneath these paragraphs. And had he thought
11:11:19 13 you needed that, you could and should have asked him for
11:11:23 14 it. And once again, sentencing tends to be somewhat of
11:11:28 15 an evidentiary free-for-all. I try to be attentive to
11:11:32 16 the rules of evidence, but I'm going to let him
11:11:38 17 continue. And I do remember pretty vividly Mr.
11:11:42 18 Kohlmann's testimony about what this Ekhlaas site was
11:11:49 19 all about.

11:11:50 20 MR. HERDMAN: I would point out for the
11:11:51 21 record, Your Honor --

11:11:52 22 THE COURT: Again, Mr. Hartman, in the
11:11:54 23 course of post-sentencing, post-trial work you find out
11:11:58 24 that the government has affirmatively misstated
11:12:03 25 something, then file the appropriate papers.

11:12:07 1 MR. HARTMAN: For the record, my objection
11:12:11 2 about an expert was that I think they need an expert to
11:12:13 3 establish this material. Just referring to what Mr.
11:12:19 4 Kohlmann's report was and saying that they looked at the
11:12:22 5 computer information I don't think is specific. This
11:12:26 6 was highly technical stuff that came out in the trial in
11:12:31 7 terms of the website evidence. And I think it takes
11:12:36 8 expertise to trace the postings, and I think it takes
11:12:41 9 expertise beyond what the government has.

11:12:43 10 MR. HERDMAN: And, Your Honor, to the extent
11:12:45 11 that any expert witness provided a foundation for this,
11:12:48 12 it was provided through the testimony of Joe Corrigan
11:12:52 13 who testified to this particular cookie in his
11:12:56 14 testimony. In that cookie there's data that
11:12:59 15 establishes a user ID. Really what Evan Kohlmann's
11:13:03 16 expert report is is really just fact testimony is that
11:13:05 17 he took that user ID 4343, he ran it through an archive,
11:13:11 18 and he came up with all of the postings that were made a
11:13:15 19 user named Al Philistine, which was using user ID 4343.
11:13:20 20 Some of those posts were -- one of them in particular
11:13:23 21 was a response to a bulletin board entry that said, Here
11:13:29 22 is a link to a video showing manufactured rockets and an
11:13:35 23 attack on a U.S. base in Iraq. And to that further
11:13:39 24 down in the bulletin board, Al Philistine, which the
11:13:42 25 government contends is Marwan El-Hindi, responded,

11:13:44 1 essentially: Yes, this is great that you did this.

11:13:49 2 May God kill Jews and Americans.

11:13:52 3 THE COURT: I'm going to overrule the
11:13:53 4 objection. I think the foundation was laid during the
11:13:58 5 course of the trial, and you may continue. And I just
11:14:02 6 can't recall whether this was ever referenced or came in
11:14:08 7 during the trial, but in any event, I'll take it under
11:14:11 8 consideration.

11:14:12 9 MR. GETZ: In addition, Your Honor will
11:14:13 10 recall the slide show, the placement of the IED that was
11:14:20 11 the subject of one of the explosives.

11:14:22 12 THE COURT: Is that the roadside, Mr. Getz?
11:14:25 13 Is that the roadside, kind of the little hillside or
11:14:29 14 whatever?

11:14:30 15 MR. GETZ: That's correct, Your Honor. A
11:14:32 16 series of photographs showing --

11:14:34 17 THE COURT: I remember it.

11:14:35 18 MR. GETZ: I would remind the Court that
11:14:37 19 that was a slide show that was obtained by this
11:14:39 20 defendant as a result of his membership on a particular
11:14:41 21 e-mail list, which was the Islamic Army of Iraq e-mail
11:14:46 22 list. Again, something that he had joined, had signed
11:14:48 23 up for and had become a member of totally independent of
11:14:52 24 Darren Griffin. And as you will also recall from the
11:14:58 25 trial evidence --

11:15:00 1 THE COURT: Was that the one that showed --
11:15:05 2 maybe it was a different one -- an artillery shell and
11:15:08 3 how you could wire up an artillery shell?

11:15:12 4 MR. GETZ: Your Honor, we can bring this up.

11:15:16 5 MR. HERDMAN: Would you like to review the
11:15:17 6 exhibit? I can pull it up.

11:15:19 7 THE COURT: I just can't recall.

11:15:21 8 MR. HERDMAN: It did depict what appears to
11:15:24 9 be an artillery shell.

11:15:26 10 MR. GETZ: Ultimately as part of that slide
11:15:28 11 show there was also a close-up photograph of the device,
11:15:33 12 and I think parts were labeled and so forth.

11:15:36 13 THE COURT: I think that's what I'm
11:15:38 14 recalling. Can I ask you this: Does the record show
11:15:41 15 or are you able to represent the period of time that he
11:15:47 16 was on that e-mail list? In other words, how long, for
11:15:52 17 what period of time he would have been getting whatever
11:15:55 18 it is they were sending out?

11:15:58 19 MR. GETZ: I'm not sure that we're able to
11:16:00 20 show or have evidence of when he became a member.

11:16:04 21 MR. HERDMAN: Your Honor, what I can do is I
11:16:08 22 know there were -- it would be impossible for us to
11:16:11 23 establish when he signed up for it. But there would be
11:16:15 24 some discrete dates where he received mailings from
11:16:19 25 them. I could try to get those right now.

11:16:21 1 THE COURT: That's fine. If you would,
11:16:23 2 please. Again, I think it will make a difference
11:16:26 3 whether somehow he got an e-mail and opened it up and so
11:16:30 4 forth, or opened it up rather than trashing it.
11:16:36 5 Whatever.

11:16:37 6 MR. GETZ: Correct, Your Honor. The key
11:16:38 7 point here is to remember rather than just opening up by
11:16:42 8 accident, seeing what it was and saying, I don't want
11:16:45 9 this, and getting rid of it, he sent it to Darren
11:16:47 10 Griffin. And as the Court may recall from the
11:16:49 11 evidence, they also had a discussion where the defendant
11:16:53 12 was asking Darren Griffin where he could get those
11:16:55 13 batteries, those kinds of batteries that were used in
11:16:58 14 the device.

11:17:03 15 There's also computer evidence from the
11:17:05 16 defendant's computer that showed that the defendant was
11:17:08 17 viewing the video about the black powder as late as
11:17:13 18 November of 2005. One of the things I would like to
11:17:18 19 point out for the Court, the Court has talked about how
11:17:23 20 it believes a cookie cutter approach to sentencing is
11:17:28 21 not appropriate, that these defendants need to be looked
11:17:30 22 at individually. And the government agrees. And we
11:17:33 23 think that the defendants in this case didn't all fit
11:17:38 24 the same role, the same position, have the same, in a
11:17:43 25 sense, responsibility.

11:17:44 1 THE COURT: Culpability, the same
11:17:47 2 culpability.

11:17:49 3 MR. GETZ: To some extent, Your Honor, but I
11:17:50 4 think what I'd like the Court to focus on really is what
11:17:53 5 was their role or position in the activities that were
11:17:56 6 going on. What was the group dynamics here? I think
11:18:01 7 it's important to note that the defendant, this
11:18:03 8 defendant was in his 40s during the course of this
11:18:05 9 conspiracy. He was actually old enough to be the
11:18:09 10 father to the four co-conspirators in this case. I
11:18:13 11 think it becomes clear from the evidence that he did not
11:18:16 12 view his role, nor, I'm sure, that anybody else viewed
11:18:20 13 his role as being a battlefield warrior himself. His
11:18:24 14 role and the role that he carried out was to recruit, to
11:18:30 15 encourage and to facilitate the participation of
11:18:34 16 protégés. You'll recall, in fact, the trial testimony
11:18:37 17 of Mikaeil Almozrouei.

11:18:40 18 THE COURT: Maybe a little slower.

11:18:46 19 MR. GETZ: There was a witness, Mikaeil
11:18:50 20 Almozrouei, who testified that the defendant had
11:18:52 21 approached him and a group of other younger men after a
11:18:56 22 religious service and asked if he was interested in
11:19:01 23 attending a training camp in Afghanistan. The Court
11:19:04 24 has already indicated he's well aware of the defendant's
11:19:09 25 recruitment of Khaleel and Zubair Ahmed during this

11:19:14 1 conspiracy. As a reminder, Government's Exhibit 5, a
11:19:17 2 photograph taken of the defendant and the Ahmeds in
11:19:25 3 Cairo. And I think that says something about his
11:19:32 4 relationship and his role.

11:19:36 5 The defendant clearly knew what their
11:19:38 6 purpose was when they traveled to Egypt, that they were
11:19:41 7 there to meet up with a mujahidin facilitator or someone
11:19:45 8 who could help them get to either a training camp or
11:19:48 9 ultimately onto the battlefield to kill American troops.
11:19:51 10 It's also clear from the evidence that he knew Griffin
11:19:55 11 to be an extremist or jihadist, even referred to him as
11:20:00 12 a jihadi on one particular occasion.

11:20:07 13 THE COURT: It's hard not to know that the
11:20:10 14 way Griffin was holding himself out, the role Griffin
11:20:15 15 was playing. I think perhaps more significantly, I
11:20:21 16 used the flypaper metaphor yesterday, that's what drew
11:20:25 17 others to Griffin, because they knew him as a source for
11:20:28 18 getting, quote, "training," close quote, and otherwise
11:20:31 19 facilitating or putting into action going forward with
11:20:35 20 what it was they were talking about.

11:20:36 21 MR. GETZ: Exactly the point, Your Honor.
11:20:38 22 Obviously the Ahmeds held themselves out to him as being
11:20:45 23 jihadists. And so he immediately -- he wasted no time
11:20:50 24 putting those parties together. The evidence showed
11:20:54 25 that he brought them up to Darren Griffin almost

11:20:59 1 immediately upon his return from Egypt without any
11:21:02 2 prompting. On June 29, 2004, this is a week before he
11:21:07 3 brought them to the ICNA conference in Cleveland, he
11:21:12 4 again brought them up to Darren Griffin. At one point
11:21:15 5 he even told Darren that the Ahmeds wanted to be
11:21:18 6 professional snipers.

11:21:21 7 We know from the evidence the defendant also
11:21:24 8 knew or should have surmised the interest of Zubair's
11:21:29 9 younger sister, Yasmin Ahmed, in sniping. She was one
11:21:34 10 of the students that was recruited to go to medical
11:21:37 11 school. In fact, I think the evidence may be she was
11:21:40 12 the first student that was recruited through the EMSS
11:21:44 13 Corporation.

11:21:45 14 THE COURT: Whose sister was she? I know
11:21:48 15 it's there. I know I've heard it.

11:21:50 16 MR. GETZ: This is Zubair Ahmed's younger
11:21:53 17 sister.

11:21:56 18 The e-mail address she used and the identity
11:22:00 19 she used was Knife Sniper. And this is, of course, an
11:22:05 20 e-mail that she used in communication with the
11:22:08 21 defendant, so he would have seen that.

11:22:10 22 Now, defendant continued to pursue the
11:22:13 23 Ahmeds even after introducing them to Griffin. The
11:22:15 24 evidence showed he pushed or pressed Darren Griffin to
11:22:20 25 copy training materials onto CDs that they could take to

11:22:24 1 the Ahmeds in Chicago when he felt that they weren't as
11:22:28 2 involved as he wanted them to be. They hadn't at least
11:22:31 3 come to Toledo to train with them. He suggested
11:22:34 4 calling Zubair to ask him, and actually what he states
11:22:38 5 on the recording is what he wants to tell Zubair is:
11:22:41 6 Zubair, Zubair, here's what's going on; are you with us
11:22:45 7 or not? And I think the key phrase that he uses is,
11:22:52 8 "Are you with us or not?" Obviously he's not referring
11:22:55 9 to Zubair and Khaleel at that time because that's who
11:22:58 10 he's talking to. Who is the "us"? Well, clearly it's
11:23:01 11 the group that he associates himself with, which is
11:23:04 12 Darren Griffin, Mohammad Amawi, and Wassim Mazloun.

11:23:11 13 The Court may recall the first meeting
11:23:13 14 between the defendant and Amawi which was video recorded
11:23:15 15 and shown at trial was at Amawi's apartment. This was
11:23:19 16 in early February of 2005. During that meeting they
11:23:24 17 viewed and discussed violent jihadist videos and
11:23:27 18 websites while actually watching them in Amawi's bedroom
11:23:32 19 on his computer. Much of the discussion that took
11:23:35 20 place, was recorded, was in Arabic, which, of course,
11:23:37 21 excluded Darren Griffin, who didn't speak that language.
11:23:41 22 And yet from this very --

11:23:42 23 THE COURT: In other words, I gather the
11:23:45 24 point you're making is they may have just met, but they
11:23:48 25 rather quickly began manifesting what I referred to

11:23:53 1 earlier as a joint predisposition.

11:23:55 2 MR. GETZ: Yes, Your Honor. So quickly at
11:23:57 3 that meeting the defendant invites Amawi to come to his
11:24:00 4 home. And, in fact, it's less than two weeks later
11:24:06 5 that the defendant, in fact, hosts the entire group on
11:24:12 6 February 16, 2005. Obviously the Court is well aware
11:24:16 7 of that meeting. He hosts them in his home. That's
11:24:19 8 in the presence of his children, Your Honor. The Court
11:24:21 9 may recall the video that was shown, a fairly lengthy
11:24:26 10 video of that meeting.

11:24:27 11 THE COURT: I do.

11:24:28 12 MR. GETZ: Government's Exhibit 6.

11:24:31 13 THE COURT: At least one child in the living
11:24:34 14 room or whatever.

11:24:37 15 MR. GETZ: That would be just to remind the
11:24:41 16 Court of many of the scenes that we saw in that video
11:24:44 17 where the defendant's younger children are present
11:24:47 18 sitting there throughout listening to these discussions.
11:24:55 19 The substance of those discussions and the substance of
11:24:57 20 that meeting actually the Court accurately described in
11:25:02 21 its earlier opinion and order when it denied the
11:25:05 22 defendant's motion for an acquittal after the trial.

11:25:13 23 If I have the Court's indulgence, I would
11:25:15 24 like to read briefly from the Court's order just to
11:25:18 25 remind the Court of how it perceived that meeting. The

11:25:23 1 Court stated on page 5 of its opinion and order that the
11:25:26 2 evidence confirming the existence of agreement between
11:25:30 3 El-Hindi, Amawi, and Mazloun to obtain training to
11:25:36 4 prepare for overseas jihad arose during the course of a
11:25:40 5 supper meeting video recorded by Griffin at El-Hindi's
11:25:44 6 residence on February 16, 2005. Shortly after Griffin
11:25:50 7 arrived, El-Hindi described a website being
11:25:52 8 reconstructed as a source for jihadist videos. Griffin
11:25:57 9 asked Mazloun if he had seen the Al-Ansar website --

11:26:08 10 THE COURT: A little slower, Mr. Getz. I
11:26:11 11 know I told you guys I want to get this done today.
11:26:14 12 But go ahead.

11:26:16 13 MR. GETZ: -- which Griffin touted as,
11:26:18 14 quote, a good website. We're getting a lot of
11:26:23 15 information on there. And after the brothers of the
11:26:28 16 Mujahidin, they're sending videos of their operations
11:26:35 17 and everything too. Really good. It's really good.
11:26:40 18 End of quote.

11:26:43 19 Later on page 6 the Court writes, "Later
11:26:48 20 during the meeting El-Hindi commented about fear on the
11:26:53 21 part of U.S. military personnel of snipers. This was
11:27:00 22 followed by a discussion between El-Hindi, Amawi, and
11:27:06 23 Mazloun in Arabic about a jihadist video of the
11:27:13 24 beheading of an Egyptian traitor. This in turn was
11:27:19 25 followed by viewing via El-Hindi's computer of online

11:27:26 1 jihadist videos."

11:27:32 2 THE COURT: That's a summary of the February
11:27:34 3 16 session.

11:27:37 4 MR. GETZ: Correct, Your Honor. I just
11:27:39 5 wanted to remind the Court of the Court's perception and
11:27:41 6 its recollection of that particular meeting on February
11:27:44 7 16, and again remind the Court that during that meeting,
11:27:48 8 including that discussion of the beheading of the
11:27:51 9 Egyptian and other discussions, much of which again were
11:27:56 10 in Arabic, which excluded only Griffin, not the
11:27:59 11 defendant's children or any of the other -- the
11:28:04 12 defendant or his co-conspirators.

11:28:14 13 In addition you might recall during that
11:28:16 14 meeting when there was a discussion about what the
11:28:18 15 mujahidin need the most. And Amawi and Mazloun are
11:28:22 16 talking about money, the mujahidin need money, and it's
11:28:26 17 this defendant that asserts and pushes the idea that,
11:28:30 18 No, what the mujahidin need is manpower. Now, if this
11:28:35 19 defendant was looking for a way to scam someone into
11:28:40 20 turning some money over to him, this was the perfect
11:28:44 21 opportunity. And I believe the Court knows from the
11:28:46 22 evidence in both of these cases that when this defendant
11:28:48 23 sees an opportunity to make some money, he's pretty
11:28:52 24 quick to jump on it. He didn't jump on that one. He
11:28:55 25 didn't say, Yeah, you're right; they need money; let's

11:28:57 1 find some ways to raise some funds, and I'll take charge
11:29:01 2 of that. He says, No, what they need is manpower.
11:29:04 3 He's encouraging them to prepare themselves and train
11:29:07 4 themselves to assist in the cause.

11:29:13 5 THE COURT: What we need or what they need
11:29:15 6 is manpower?

11:29:16 7 MR. GETZ: They're talking about what the
11:29:18 8 mujahidin need.

11:29:19 9 THE COURT: So he said rather than "we" but
11:29:21 10 "they"?

11:29:22 11 MR. GETZ: What they need.

11:29:24 12 THE COURT: That's fine.

11:29:28 13 MR. GETZ: I would also assert, Your Honor,
11:29:29 14 the defendant didn't limit his family's involvement in
11:29:32 15 these activities to just his children. There's also
11:29:34 16 trial evidence that included instances where the
11:29:38 17 defendant spoke of his -- of encouraging his new young
11:29:42 18 wife to also view videos of beheadings and battlefield
11:29:46 19 deaths. There are at least four links in our
11:29:49 20 memorandum; in my copy it's on page 48. I apologize
11:29:54 21 for not knowing what page it is on the Court's copy.
11:29:57 22 But those links are there if the Court would want to
11:29:59 23 review them.

11:30:09 24 Also I think the Court had pointed this out
11:30:11 25 at some earlier point, when Darren Griffin is explaining

11:30:15 1 what his purpose is in training and that his goals and
11:30:19 2 objectives are, making it very clear that this is
11:30:22 3 training for jihad, the defendant clearly responds to
11:30:26 4 that, "I understand." So there's no question he knew
11:30:32 5 what kind of training was being talked about and what
11:30:35 6 these individuals were working to prepare themselves
11:30:40 7 for.

11:30:40 8 Now, the defendant was in a position to and
11:30:43 9 was able to mold and manipulate these younger
11:30:46 10 individuals because the evidence showed he was respected
11:30:49 11 as a religious elder. The evidence shows Amawi
11:30:53 12 referred to him as sheik. You'll hear testimony from
11:30:57 13 Dr. Kaushal that the defendant was well respected around
11:31:01 14 the country as a religious leader. You'll also hear
11:31:06 15 that Yasmin Ahmed, again Zubair's younger sister, told
11:31:11 16 Kaushal that the defendant was teaching her to become a
11:31:13 17 complete Muslim woman.

11:31:19 18 We learned at the defendant's bond hearing
11:31:21 19 that he had been assisting at some point, and I mean at
11:31:25 20 the Toledo area corrections facility; you'll hear again
11:31:28 21 testimony from Dr. Kaushal that the defendant was
11:31:31 22 converting inmates to Islam. Now, there's nothing
11:31:35 23 wrong with sharing your religious beliefs. The
11:31:38 24 government isn't making that contention. The
11:31:40 25 importance of the activity is, again, though, that it

11:31:42 1 shows the defendant has this leadership role and purpose
11:31:47 2 in his activities.

11:31:49 3 Now, all that, Your Honor, demonstrates why
11:31:51 4 a sentence of life is specified by the sentencing
11:31:55 5 guidelines and is requested and recommended by the
11:31:58 6 government, is necessary to protect the public from this
11:32:01 7 particular defendant.

11:32:02 8 THE COURT: I gather what you're saying, in
11:32:04 9 reciting some of those activities, that he's accustomed
11:32:08 10 to working with younger individuals and providing a
11:32:11 11 sense of guidance?

11:32:12 12 MR. GETZ: Correct, Your Honor. And when
11:32:13 13 you're looking to find activities by this defendant as
11:32:17 14 to going out at a shooting range, for example, or
11:32:20 15 running through the woods playing paint ball, or
11:32:24 16 collecting weapons and explosives to use at some later
11:32:28 17 date, that wasn't his role. And it was clear from the
11:32:30 18 evidence, it's clear from his activities, it's clear
11:32:33 19 from who he is and how he behaves, that that was not his
11:32:37 20 role. Now, one of his roles is he expressed to the
11:32:40 21 group at one of the meetings was to be a fund raiser.
11:32:44 22 I'm the guy that can get you to the grants, and we can
11:32:47 23 use that. But in addition, it's very clear that these
11:32:51 24 individuals looked up to him, respected him as an elder
11:32:54 25 both because of his age, but also because of his

11:32:57 1 religious devoutness and his ideology. So I would
11:33:06 2 submit to the Court he may have been bordering on too
11:33:10 3 advanced an age to be on the battlefield himself at 42,
11:33:14 4 43, 44, 45, but the evidence has showed that he wasn't
11:33:20 5 too old to recruit, which he did, to encourage these
11:33:25 6 recruits, to offer his support to them, to attempt to
11:33:29 7 facilitate their activities, to motivate them and to
11:33:32 8 mentor them. And, Your Honor, he won't be too old to
11:33:35 9 do that at 55 years old. He won't be too old to do
11:33:39 10 that at 65 years old. And he won't even be too old to
11:33:43 11 do that at 75 years old. We know the defendant is
11:33:48 12 steadfast in his ideology.

11:33:52 13 THE COURT: What you're saying is that's the
11:33:54 14 kind of material support that one quite literally never
11:34:05 15 outgrows.

11:34:07 16 MR. GETZ: Correct, Your Honor, the only
11:34:09 17 sentence that will successfully deter the defendant and
11:34:11 18 protect the public from his future crime, that includes
11:34:15 19 his incessant thievery, that's something the public also
11:34:22 20 needs to be protected from, and we feel the only
11:34:25 21 successful deterrence is a life sentence. He's shown
11:34:29 22 no hesitance to indoctrinate even his younger children
11:34:32 23 in his hateful and extremist beliefs.

11:34:35 24 THE COURT: Well, whether he indoctrinated
11:34:37 25 or exposed them, the report shows he certainly exposed

11:34:47 1 them.

11:34:47 2 MR. GETZ: Your Honor, this is a man who
11:34:49 3 admittedly had a happy childhood. He was given an
11:34:52 4 opportunity to enter into this country as a young man.
11:34:54 5 He was able to start businesses. He was able to obtain
11:34:58 6 an education, raise a large family, relocate from city
11:35:02 7 to city, freely practice his religion, and ultimately
11:35:07 8 become a full-fledged citizen of this country. And yet
11:35:10 9 his response is to recruit other younger hate-filled men
11:35:15 10 and try to assist them in acquiring the training and
11:35:18 11 resources they need the to kill American soldiers.

11:35:23 12 A man who not only allows but encourages his
11:35:27 13 young children and wife to view violent beheadings and
11:35:31 14 battlefield deaths, lest they grew up not as consumed as
11:35:45 15 he is with bloodlust for Jews and U.S. soldiers.
11:35:51 16 That's the kind of man that this is, Your Honor.

11:35:55 17 I believe the two pictures, Government's
11:35:58 18 Exhibit 5 and Government's Exhibit 6, say it all. The
11:36:07 19 photo of the defendant with his two charges in Egypt,
11:36:12 20 and the photo of the meeting in his own home with his
11:36:15 21 young children there participating, hearing, listening
11:36:20 22 to everything that goes on. That's three generations
11:36:24 23 of hate, Your Honor, that are represented in those
11:36:25 24 photographs, or at least potentially.

11:36:33 25 I don't know, I probably don't need to

11:36:35 1 remind the Court since it came up earlier today of the
11:36:38 2 evidence that showed the phone contacts and the
11:36:42 3 communications that continued between this defendant and
11:36:45 4 co-conspirators. As we indicated, there were even calls
11:36:53 5 on the satellite phone as late as two weeks before the
11:36:57 6 arrest. So again, as we indicate, we don't know what
11:37:00 7 the substance of those calls were. But the evidence
11:37:03 8 does show that there was communication that was going
11:37:05 9 on. I believe that there was trial evidence that
11:37:10 10 showed -- that charted out the number of telephone
11:37:14 11 communications between all of the defendants. This is
11:37:28 12 a chart that was taken from government trial exhibits.
11:37:32 13 We showed this at trial.

11:37:43 14 THE COURT: For the record, do you recall
11:37:46 15 what exhibit number it is?

11:37:48 16 MR. HERDMAN: It was in summation, a
11:37:51 17 demonstrative exhibit.

11:37:53 18 THE COURT: I understand.

11:37:54 19 MR. GETZ: These show the total number of
11:37:56 20 phone contacts that were shown by the phone records.

11:37:59 21 THE COURT: Does it have an exhibit number?
11:38:02 22 If not --

11:38:04 23 MR. GETZ: This would have been Government's
11:38:06 24 Exhibit Exhibits 126A through 126G, also 177 and 178.

11:38:14 25 MR. HERDMAN: Do you want to mark it for

11:38:16 1 sentencing?

11:38:17 2 MR. GETZ: We'll mark this as sentencing
11:38:19 3 Exhibit 7.

11:38:19 4 THE COURT: Were these trial exhibits?

11:38:21 5 MR. GETZ: The exhibits referenced at the
11:38:26 6 top were, the phone records themselves were trial
11:38:29 7 exhibits.

11:38:29 8 THE COURT: But this particular item?

11:38:31 9 MR. GETZ: This is just a summary of what
11:38:33 10 those exhibits show, Your Honor.

11:38:34 11 THE COURT: I don't recall seeing this.

11:38:38 12 MR. GETZ: This is just a summary. It was
11:38:40 13 used in the summation, Your Honor. I'll mark this as
11:38:47 14 Sentencing Exhibit 7. But again, it shows the number
11:38:50 15 of contacts that occurred between all of the individuals
11:38:56 16 and the co-conspirators independent of Darren Griffin,
11:39:03 17 Your Honor.

11:39:05 18 THE COURT: What Exhibit number is that?

11:39:11 19 MR. HERDMAN: It's Number 7, El-Hindi
11:39:14 20 Sentencing Exhibit.

11:39:15 21 MR. GETZ: I'm sorry, El-Hindi sentencing
11:39:18 22 Exhibit Number 7.

11:39:24 23 So, Your Honor is correct that it states
11:39:27 24 that Darren Griffin was somewhat central to bringing
11:39:31 25 these individuals together who may or may not have found

11:39:34 1 each other, but the evidence clearly showed that they
11:39:39 2 shared the same interests, the same goals, the same
11:39:43 3 purposes once brought together, and it wasn't Darren
11:39:46 4 Griffin who was necessarily in the middle of all of
11:39:48 5 their connectivity.

11:39:55 6 THE COURT: And I understand that. And I
11:39:56 7 didn't say it -- my point simply was he played a
11:40:02 8 significant role along the way. But that does not
11:40:08 9 exculpate any of the defendants or undercut the jury's
11:40:12 10 verdict. I do think it is a factor in trying to assess
11:40:16 11 particularly ultimately the seriousness of these
11:40:22 12 offenses and the history and characteristics of these
11:40:28 13 defendants and so forth.

11:40:32 14 MR. GETZ: I understand.

11:40:32 15 THE COURT: Mr. Hartman pointed out -- I
11:40:35 16 think it was a fair point for him to make and for me to
11:40:37 17 take into consideration. Essentially what he's saying
11:40:41 18 at this stage, Judge, keep in mind just where Darren
11:40:45 19 Griffin was and how important he was to what was going
11:40:50 20 on and to -- as a facilitator or enabler, from how he
11:40:58 21 holds himself out to the kinds of subjects he would
11:41:02 22 discuss with him, sometimes raise on his own, and
11:41:06 23 sometimes in response to things the defendants were
11:41:08 24 saying. Go ahead.

11:41:11 25 MR. GETZ: Your Honor, again, the important

11:41:13 1 thing to take away from this --

11:41:15 2 THE COURT: Let me also say, I wasn't -- I
11:41:22 3 made some notes that I agree with the government that
11:41:28 4 the consequences of fully accomplishing successful
11:41:35 5 terrorism can be so substantial and so dangerous, in
11:41:45 6 particular the kind of terrorism involving weapons of
11:41:50 7 mass destruction which fortunately we have not seen,
11:41:53 8 though other countries, Japan comes to mind, I believe
11:41:56 9 there was a poison attack in the subway some years ago,
11:42:02 10 that those consequences are -- can be so devastating, so
11:42:13 11 difficult to detect and deflect and deter that I do
11:42:23 12 believe that the government is justified in using the
11:42:28 13 efforts such as this, which I refer to as casting the
11:42:32 14 net, even though it doesn't know what kind of fish might
11:42:37 15 swim into it, sharks or minnows, it is imperative for
11:42:47 16 the government in the interest of protecting all of us,
11:42:50 17 whether here or us abroad or others abroad or wherever,
11:42:55 18 that it feel free and justified to -- for these kinds of
11:42:59 19 activities, before the bud has even sprouted, so to
11:43:05 20 speak, to nip them and to defeat them. And I also
11:43:10 21 think that in this setting and situation, to the extent
11:43:20 22 what the government did in this case and may be doing or
11:43:25 23 have done in other cases that will be coming to the
11:43:28 24 public attention in due course, that maybe persons who
11:43:34 25 might otherwise be inclined to do what these defendants

11:43:37 1 did, even though, quote, they did nothing, close quote,
11:43:43 2 to make them cautious and on guard and ultimately to do
11:43:49 3 as people in the Mosque did who were approached and turn
11:43:53 4 their backs and walk away and say, I want nothing to do
11:43:57 5 with it. And who knows, some of those individuals may
11:44:03 6 share some of the views about our government and its
11:44:09 7 policies and what we're doing in Iraq and elsewhere;
11:44:15 8 that they have the sound common sense to say, Hey, what
11:44:19 9 I think and may say to others about what I think, I'm
11:44:27 10 not going to go there. And my sense is that the kind
11:44:37 11 of investigation that the government conducted here is
11:44:41 12 appropriate and, in the context of the concerns that the
11:44:48 13 government on behalf of all of us quite properly had,
11:44:52 14 it's never too early to stop terrorism.

11:45:05 15 MR. GETZ: Thank you, Your Honor.

11:45:07 16 THE COURT: Provided, of course, the
11:45:11 17 government employs lawful methods, and I consider these
11:45:14 18 methods to be lawful.

11:45:18 19 MR. GETZ: Those are difficult decisions
11:45:20 20 that are made by the people who are out there trying to
11:45:24 21 protect our community. And sometimes they're made
11:45:28 22 correctly, sometimes maybe they're not. Hopefully the
11:45:33 23 decisions are made in a fashion that's timely enough
11:45:37 24 that does prevent the kind of attacks that happened in
11:45:41 25 Japan that the Court referenced.

11:45:43 1 But what I want to remind the Court here is
11:45:46 2 just all of those instances that the evidence has
11:45:49 3 demonstrated where this defendant was acting
11:45:52 4 independently of Darren Griffin. And the Court touched
11:45:56 5 on this in the sentencing of defendant Amawi, in talking
11:46:01 6 about this analysis of Darren Griffin stepped in, Darren
11:46:07 7 Griffin introduced himself to Mohammad Amawi, they
11:46:09 8 engaged in these activities, but what's to say if it
11:46:13 9 hadn't been Darren Griffin, that he wouldn't have found
11:46:16 10 somebody else to assist him or at some point if he had
11:46:19 11 become discouraged with Darren Griffin he would have
11:46:21 12 looked elsewhere. What we don't know is given the
11:46:25 13 proclivity that the evidence shows for this defendant to
11:46:28 14 be seeking out some of this information, to be
11:46:31 15 expressing these kinds of views that he had, and to be
11:46:34 16 soliciting and attempting to recruit other individuals,
11:46:38 17 again, independent of Darren Griffin, that he may have
11:46:43 18 gone down this avenue in way that was not detected by
11:46:46 19 the government.

11:46:48 20 I just want to say finally, Your Honor, this
11:46:50 21 is a defendant who has demonstrated no remorse. He's
11:46:53 22 accepted no responsibility for any of his activities,
11:46:56 23 and he certainly has shown no respect for the law.

11:47:01 24 The sentencing factors of Title 18, Section
11:47:04 25 3553 that the Court has to consider, and the Court is

11:47:08 1 well aware of these, but it's important to note I think
11:47:12 2 or to remind ourselves that the sentence, the statute
11:47:16 3 itself says the sentence needs to be sufficient but not
11:47:19 4 greater than necessary to comply with the purposes --

11:47:24 5 THE COURT: You --

11:47:25 6 MR. GETZ: -- sufficient but not greater
11:47:27 7 than necessary to comply with the purposes in paragraph
11:47:32 8 2. And those purposes are the need for the sentence to
11:47:37 9 reflect the seriousness of the offense, to promote
11:47:42 10 respect for the law, and provide just punishment for the
11:47:46 11 offense to afford adequate deterrence to criminal
11:47:51 12 conduct, and to protect the public from further crimes
11:47:56 13 of the defendant, and also to provide for any needed
11:48:03 14 educational, vocational training and so forth.

11:48:06 15 Again, looking to the purpose of sentencing
11:48:09 16 as set forth in that statute, the government submits
11:48:13 17 that the only sentence that successfully meets those
11:48:16 18 purposes for this defendant, given his role, given his
11:48:20 19 background, given his characteristics, is a sentence of
11:48:24 20 life. And again, I would tell the Court, yeah, it
11:48:27 21 would not be appropriate to compare this defendant to
11:48:31 22 Defendant Amawi or to Defendant Mazloun on the basis of,
11:48:35 23 well, this one actually got a gun, this one didn't; this
11:48:38 24 one went and shot a gun, this one didn't. They should
11:48:41 25 be looked at individually in terms of what was their --

11:48:46 1 THE COURT: That's an all I was trying to
11:48:47 2 say.

11:48:47 3 MR. GETZ: -- their purpose and their goal.
11:48:49 4 And we agree, Your Honor. This defendant had a role
11:48:51 5 and a purpose in these activities that was different
11:48:54 6 from the other two defendants. And it was based on his
11:48:57 7 history, his particular individual characteristics,
11:49:00 8 including his recognition and the respect that he was
11:49:04 9 given as an elder. And we can see from activities
11:49:09 10 outside of what occurred in this conspiracy that he
11:49:13 11 has --

11:49:14 12 THE COURT: I gather what you're saying to
11:49:15 13 some extent -- candidly, I haven't thought about this --
11:49:19 14 but look at what he was up to. To some extent -- and
11:49:22 15 I'm putting words in your mouth, but I think it's what
11:49:25 16 you're saying. To the extent that I view Griffin as
11:49:29 17 kind of a promoter from outside, Mr. El-Hindi became a
11:49:33 18 promoter from within and supplemented and complemented
11:49:39 19 the sorts of things that Griffin was talking about and
11:49:43 20 which were being talked about with Griffin.

11:49:45 21 MR. GETZ: Correct, Your Honor.

11:49:50 22 And the only other thing at this point, I
11:49:52 23 would ask if the Court has any concerns that we haven't
11:49:56 24 addressed, it's given thought to any particular issues
11:50:02 25 or items that came up with our sentencing memorandum

11:50:05 1 that you thought needed more fully explored, we would
11:50:08 2 invite the opportunity to either address those or
11:50:10 3 provide additional evidence, bring up any of those links
11:50:15 4 if the Court feels the need to view those.

11:50:18 5 THE COURT: Okay.

11:50:20 6 MR. GETZ: Thank you, Your Honor.

11:50:27 7 Also, Your Honor -- I'm sorry. We would ask
11:50:29 8 the Court for purposes of the record and for this
11:50:32 9 hearing that the Court admit all of our exhibits, 1
11:50:37 10 through 7, and the copy of the trial exhibit from the
11:50:42 11 fraud trial, Government's Exhibit 10C, I believe.

11:50:47 12 THE COURT: Okay.

11:50:49 13 MR. HARTMAN: I object to admission of the
11:50:50 14 summary exhibit, Judge, because -- for a number of
11:50:55 15 reasons. Number one, the calls on there that are
11:50:58 16 represented going to Zubair was the house where the
11:51:03 17 Ahmeds lived. Mr. El-Hindi had numerous contacts with
11:51:08 18 Zubair's father, numerous contacts with Zubair's sister,
11:51:11 19 and we have no way of knowing who those calls were. In
11:51:14 20 addition to that, the calls that are represented as
11:51:16 21 coming from Amawi on the satellite phone, the trail
11:51:20 22 evidence showed that a number of times Griffin grabbed
11:51:23 23 that satellite phone and called El-Hindi.

11:51:29 24 In addition to that, the calls
11:51:35 25 representing --

11:51:36 1 THE COURT: Go ahead, finish up.

11:51:37 2 MR. HARTMAN: The calls that the government
11:51:38 3 claims were between he and Amawi were AZ Travel calls,
11:51:44 4 and he was doing business with AZ Travel, and that
11:51:47 5 explains some of those calls. Without some more
11:51:51 6 background for who made the calls and why, I don't think
11:51:54 7 that should be considered at all.

11:51:56 8 THE COURT: Okay. Those are very fair
11:51:59 9 points. I'm going to admit it; I'll overrule the
11:52:02 10 objection, but it certainly goes to the weight. It
11:52:04 11 shows that there may have been some contact --

11:52:07 12 MR. HARTMAN: There may --

11:52:08 13 THE COURT: -- beyond that.

11:52:08 14 MR. HARTMAN: We don't know.

11:52:10 15 THE COURT: That's a very fair point.

11:52:13 16 MR. HARTMAN: We were going to begin with
11:52:14 17 our witnesses, which we think we'll take about an hour
11:52:18 18 with. Would the Court like to do that now or break for
11:52:21 19 lunch?

11:52:36 20 THE COURT: The witnesses plus the
11:52:38 21 transcripts?

11:52:39 22 Whatever way you want to go, and I'll excuse
11:52:43 23 Tracy during the transcript portion. Because I'll just
11:52:46 24 give her the transcripts for the record. I'd just as
11:52:51 25 soon move on, get some witnesses done, then we'll break

11:52:54 1 for lunch.

11:52:55 2 MR. HARTMAN: We're going to begin with our
11:52:57 3 live witnesses. Mr. Boss will handle that. What I
11:53:00 4 envision, Judge, is after we get completed with our
11:53:03 5 witnesses, I'm going make some argument to the Court,
11:53:06 6 then Mr. El-Hindi will address the Court himself, at
11:53:10 7 which time I will have a couple of follow-up closing
11:53:13 8 remarks. If that's okay with the Court.

11:53:16 9 THE COURT: Yeah.

11:53:22 10 MR. BOSS: Judge, for the record it was our
11:53:24 11 intention to present video conference witnesses.
11:53:28 12 Unfortunately, due to logistical problems, two
11:53:32 13 statements had to be taken -- or pardon me, three
11:53:34 14 statements had to be taken yesterday. They were done
11:53:37 15 by video conference. They have been reduced to
11:53:42 16 transcript, which we will offer into evidence, along
11:53:45 17 with a copy of the tape. Unfortunately, the
11:53:48 18 videotape --

11:53:50 19 THE COURT: I've got to do some lip-syncing.
11:53:54 20 Apparently you notified me during the break that for
11:54:01 21 various reasons, not the least of which you had to put
11:54:04 22 all of this together on very short notice, you asked
11:54:07 23 that I postpone the sentencing because the witnesses
11:54:11 24 were not going to be available at all during the day.
11:54:16 25 I said no. I said at least get their testimony. And

11:54:20 1 it turned out that you were not able to, quote, video
11:54:26 2 and audio record into one recording. And that actually
11:54:32 3 I guess the audio was not recorded, but Angela, the
11:54:37 4 court reporter, took it.

11:54:39 5 MR. BOSS: That's exactly the point.

11:54:40 6 THE COURT: That's fine.

11:54:41 7 MR. BOSS: So those three witnesses will be
11:54:43 8 presented by means of simply the transcripts, which will
11:54:46 9 be read. As well, there are a couple of live witnesses
11:54:53 10 we have today. Manal El-Hindi. M-a-n-a-l.

11:55:15 11 (The witness was sworn by the clerk.)

11:55:33 12 THE COURT: You may be seated. It's quite
11:55:36 13 uncomfortable, but can you slide the chair up so you're
11:55:39 14 about this distance from the microphone. Too close its
11:55:47 15 fuzzy.

11:55:57 16 Will you tell me your name, please.

11:56:01 17 THE WITNESS: Manal El-Hindi, M-a-n-a-l.

11:56:06 18 THE COURT: M-a-n-a-l.

11:56:10 19 THE WITNESS: M-a-n-a-l.

11:56:11 20 THE COURT: El-Hindi?

11:56:13 21 THE WITNESS: Yeah.

11:56:14 22 THE COURT: And you are related to Marwan
11:56:16 23 El-Hindi?

11:56:19 24 THE WITNESS: Yeah, I'm his sister.

11:56:20 25 THE COURT: You're his?

11:56:22 1 THE WITNESS: His sister.

11:56:24 2 THE COURT: Where do you live, what town or
11:56:26 3 city?

11:56:27 4 THE WITNESS: I live in Chicago.

11:56:29 5 THE COURT: How long have you lived in
11:56:30 6 Chicago?

11:56:31 7 THE WITNESS: Three years.

11:56:32 8 THE COURT: Before that where did you live?

11:56:34 9 THE WITNESS: North Carolina.

11:56:37 10 THE COURT: And are you a native born
11:56:39 11 American, or were you born elsewhere?

11:56:42 12 THE WITNESS: I was born in Jordan.

11:56:43 13 THE COURT: When did you come to this
11:56:44 14 country?

11:56:45 15 THE WITNESS: In 1993.

11:56:49 16 THE COURT: Have you since become a citizen?

11:56:51 17 THE WITNESS: Not really. I have the green
11:56:53 18 card.

11:56:54 19 THE COURT: And don't assume that I mean
11:56:58 20 anything negative by that. I am well aware of, from
11:57:03 21 conducting naturalizations, that can be an extremely
11:57:07 22 difficult decision because it represents in some sense
11:57:13 23 an abandonment of one's own heritage.

11:57:17 24 Okay. Mr. Boss, go ahead.

11:57:18 25 MR. BOSS: Thank you, Judge.

11:57:20 1

- - -

11:57:20 2

MANAL EL-HINDI, DIRECT EXAMINATION

11:57:20 3

BY MR. BOSS:

11:57:20 4

Q. Manal, you're the younger sister of Marwan

11:57:23 5

El-Hindi?

11:57:23 6

A. No, I have another younger sister. I'm the --

11:57:28 7

I'm number four in the family.

11:57:31 8

Q. Marwan, I believe, is 46 years old now. How old

11:57:34 9

are you?

11:57:35 10

A. I'm 39.

11:57:37 11

Q. And where did you grow up at?

11:57:40 12

A. I grow up in Jordan.

11:57:42 13

Q. In Jordan. And was Marwan part of the family

11:57:45 14

with you as you were growing up?

11:57:47 15

A. Yes.

11:57:47 16

Q. And you moved to the U.S. about -- was it 19

11:57:50 17

years ago, did you say?

11:57:51 18

A. Fourteen years ago.

11:57:54 19

Q. Fourteen years ago. You came here with your

11:57:57 20

husband?

11:57:57 21

A. Yes.

11:57:58 22

Q. How was he employed?

11:58:00 23

A. We came here for him to do his internal medicine.

11:58:06 24

We lived in New Jersey, then we moved to North Carolina

11:58:10 25

to serve in an underserved area.

11:58:13 1 Q. Your husband --

11:58:15 2 THE COURT: Serve in what area?

11:58:16 3 THE WITNESS: In underserved area.

11:58:20 4 Q. He's a physician; is that correct?

11:58:22 5 A. Yes.

11:58:25 6 Q. Do you work outside of the house?

11:58:26 7 A. No, just on Sunday I teach on Sunday school.

11:58:30 8 Q. And are you trained or do you have an educational
11:58:33 9 background?

11:58:34 10 A. Yes, I have a bachelor's in medical and
11:58:41 11 biological analysis.

11:58:42 12 Q. I understand you have some children?

11:58:44 13 A. Yeah, I have four kids.

11:58:45 14 Q. How old are they?

11:58:46 15 A. I have 13, 11, nine and seven years old.

11:58:52 16 Q. I understand Marwan El-Hindi has a large family
11:58:55 17 as well, a number of children; seven, I believe?

11:58:57 18 A. Yeah.

11:58:59 19 Q. Did you travel with your children this last year
11:59:03 20 for a family get-together in Jordan?

11:59:05 21 A. Yes.

11:59:05 22 Q. And can you just tell us briefly about that? The
11:59:11 23 El-Hindi family in Jordan has a large family home if I'm
11:59:14 24 not mistaken?

11:59:15 25 A. Yes.

11:59:16 1 Q. Somewhat similar to the image we had that Mr.
11:59:19 2 Amawi presented earlier?

11:59:20 3 A. Yes.

11:59:20 4 Q. Were you in court when that was presented?

11:59:22 5 A. Yes.

11:59:23 6 Q. So is there an El-Hindi family home that's
11:59:25 7 similar to that?

11:59:26 8 A. Yeah, it is similar to this. We're accustomed
11:59:31 9 to building a big house for the whole family, and then
11:59:38 10 each member of the family will have his own floor.

11:59:41 11 Q. Did all the children get together in Jordan,
11:59:43 12 including Mr. El-Hindi's children?

11:59:44 13 A. Yes, there were 23 children in the house.

11:59:50 14 Q. How long did all 23 children and these adults
11:59:53 15 stay together? How long were you all together this
11:59:58 16 summer?

11:59:58 17 A. Two and a half months.

12:00:00 18 Q. That's very nice. How many siblings did you
12:00:03 19 grow up with along with Marwan? How many brothers and
12:00:06 20 sisters?

12:00:06 21 A. We are four brothers and three sisters.

12:00:10 22 Q. When you came to the United States, Marwan was
12:00:12 23 already here; is that right?

12:00:14 24 A. Yes.

12:00:14 25 Q. And did you stay in touch with him after you

12:00:17 1 arrived?

12:00:17 2 A. Yes. Always.

12:00:19 3 Q. What was the frequency of your communication with
12:00:22 4 Marwan El-Hindi?

12:00:24 5 A. Well, he used to visit me when I was -- when we
12:00:28 6 first came to Pennsylvania, then New Jersey, then North
12:00:33 7 Carolina. And he was with me in Pennsylvania --
12:00:37 8 visited me in Pennsylvania lots of times because I was
12:00:40 9 knew to the country, and he wanted to keep in touch with
12:00:44 10 me. He visited with me also in New Jersey and in North
12:00:47 11 Carolina.

12:00:48 12 Q. Did you stay in touch by phone as well?

12:00:50 13 A. Yes.

12:00:51 14 Q. When did you move to Chicago? Do you recall?

12:00:53 15 A. After Marwan's arrest.

12:00:55 16 Q. You moved there after his arrest?

12:00:57 17 A. Yeah.

12:00:59 18 Q. And prior to his arrest, in let's say the last
12:01:02 19 couple years before his arrest, did you have contact
12:01:05 20 with him frequently?

12:01:06 21 A. Yes.

12:01:06 22 Q. Was it by phone?

12:01:07 23 A. It was by phone, and he visited me also in North
12:01:12 24 Carolina, he and my other brother Yousef.

12:01:15 25 Q. How often would you speak with him by phone in

12:01:18 1 those last couple years before his arrest?

12:01:20 2 A. Sometimes every day, sometimes every week,
12:01:22 3 sometimes every other week.

12:01:27 4 Q. How would you describe Marwan El-Hindi? How was
12:01:29 5 his character?

12:01:30 6 A. Well, Marwan is a kindhearted man. Like, as a
12:01:33 7 brother he's very compassionate, he's very kindhearted.
12:01:39 8 He always expressed his love for his sisters. So I
12:01:46 9 find it hard to, you know, to hear all those accusations
12:01:50 10 against him.

12:01:50 11 Q. I understand that your father and Marwan's father
12:01:53 12 passed away a couple years ago.

12:01:55 13 A. Yes.

12:01:56 14 Q. Do you remember when that was approximately?

12:01:58 15 A. It was, I think, in November, '94.

12:02:04 16 Q. And was that -- obviously it's an important event
12:02:08 17 for you, but I understand that you had a bit of a
12:02:11 18 wake-up call as a result of that?

12:02:12 19 A. Yeah. Actually I -- before that I didn't wear
12:02:15 20 the Islamic hijab.

12:02:17 21 Q. Didn't wear the?

12:02:19 22 A. Hijab, the headdress.

12:02:21 23 Q. The Muslim headdress?

12:02:23 24 A. Yeah.

12:02:24 25 And I went to Jordan, and I saw my father was

12:02:26 1 dying there, so it was a wake-up call for me because for
12:02:30 2 Muslim woman, I know that a Muslim woman should wear the
12:02:35 3 Islamic hijab, or the headdress.

12:02:38 4 Q. And you had not been doing that before that?

12:02:40 5 A. No. And my father wanted me to wear the Islamic
12:02:46 6 hijab since, like, when I was 14, 15 years old. And
12:02:52 7 seeing my father dying, I, you know, it was a wake-up
12:02:56 8 call for me.

12:02:56 9 Q. Did you make other changes in terms of your
12:03:02 10 devotion to Islam?

12:03:03 11 THE COURT: I apologize. How do you spell
12:03:05 12 hijab.

12:03:06 13 THE WITNESS: H-i-j-a-b.

12:03:14 14 THE COURT: Restate the question.

12:03:15 15 BY MR. BOSS:

12:03:15 16 Q. Did you have other changes? How else is a
12:03:18 17 Muslim woman in day-to-day activities -- I remember the
12:03:22 18 first time I met you, I extended my hand to shake your
12:03:25 19 hand, and you declined.

12:03:27 20 A. Yeah. Actually, like we're accustomed to wearing
12:03:31 21 the hijab, and Muslim women prefers not to shake hands
12:03:36 22 with a man. It's not obligation in Islam, but it is --
12:03:40 23 like, it gives you, we believe -- in Islam we believe
12:03:44 24 that it will give you more good deeds to go to Gennah or
12:03:48 25 Heaven.

12:03:49 1 THE COURT: How do you spell that? I'm
12:03:50 2 sorry.

12:03:52 3 THE WITNESS: Gennah, G-e-n-n-a-h.

12:04:01 4 So I started not to shake hands with men
12:04:04 5 too, like wearing the hijab.

12:04:06 6 BY MR. BOSS:

12:04:06 7 Q. And I understand that that's become a difficult
12:04:09 8 thing to say.

12:04:11 9 A. Yeah. Because, like, every time I want -- like,
12:04:15 10 every time an American man wants to shake hands with me,
12:04:21 11 I say, excuse me, and I'll start explaining for him like
12:04:25 12 how -- why I'm doing this, you know. And it became
12:04:29 13 difficult because, you know, we entertain people a lot,
12:04:33 14 and we see people a lot. So I didn't want them to feel
12:04:40 15 that, you know, they're insulted or anything like that.
12:04:44 16 So I started shaking, you know, hands.

12:04:47 17 Q. If you become -- declining shaking one's hand, I
12:04:53 18 take it it doesn't mean that you have become a
12:04:56 19 fundamentalist or a radical person?

12:04:57 20 A. No. No.

12:05:01 21 Q. Did Marwan have any discussions with you about
12:05:04 22 the war in Iraq?

12:05:06 23 A. No.

12:05:08 24 Q. What type of things would he normally be talking
12:05:11 25 about with you and family members?

12:05:13 1 A. Just, like, family matters.

12:05:16 2 Q. What was the focus of his attention, if you know,
12:05:18 3 in your discussions with him when you spoke with him
12:05:21 4 almost daily?

12:05:22 5 A. His kids.

12:05:23 6 Q. His kids. I understand in the last couple years
12:05:31 7 before Marwan was arrested that he was raising the
12:05:33 8 children by himself essentially?

12:05:35 9 A. Yes.

12:05:36 10 Q. He did get married again?

12:05:38 11 A. Yes.

12:05:41 12 Q. Did the children occupy most of his time?

12:05:44 13 A. Actually, all of his time.

12:05:52 14 Q. The family -- I know that you've come here from
12:05:56 15 Chicago, and your other brothers arrived from Dubai.
12:06:01 16 Is the family still supportive of Marwan?

12:06:04 17 A. Yeah. All of them.

12:06:05 18 Q. And if Marwan is later released from prison, will
12:06:09 19 the family be there to assist him in reestablishing his
12:06:13 20 life?

12:06:13 21 A. Yes. Of course.

12:06:15 22 Q. Do you know what Marwan advised his children
12:06:18 23 regarding the United States?

12:06:20 24 A. Yeah. He was always telling them, even after
12:06:23 25 his arrest, that, you know, this is your country. You

12:06:27 1 were born here. You are an American. He didn't want
12:06:30 2 them to go to Jordan. And actually, after his arrest I
12:06:35 3 went to visit him in the detention center in Milan,
12:06:41 4 Michigan, and he was talking to me about the accusations
12:06:44 5 that prosecutors are telling, you know, everyone about.
12:06:49 6 And he was, like, how could I do these things? Like, my
12:06:55 7 kids are American. How can I, you know, do things to
12:06:59 8 hurt Americans? Like, he was telling me that those
12:07:03 9 accusations are all, like, lies; and I don't do this,
12:07:08 10 and I can't do this. My kids are American. I'm not
12:07:11 11 that kind of a man who hurts, you know, people. And he
12:07:15 12 is not the kind of a man who can hurt anyone. He's
12:07:18 13 very kindhearted as a brother and as a son, as a father.
12:07:22 14 He's very kindhearted.

12:07:24 15 Q. Before I allow the prosecuting attorney to ask
12:07:26 16 you any questions that they have, is there anything else
12:07:28 17 that you think that the Judge should know from you
12:07:30 18 before I sit down?

12:07:32 19 A. Yeah. Actually, like, even also after his
12:07:35 20 arrest Marwan was telling me that I thought that he was
12:07:40 21 scared, and he was telling me that he's not scared
12:07:44 22 because he believes in the justice system in the United
12:07:47 23 States, and he believes that the Judge will be fair.
12:07:50 24 So -- but until now, I am scared. My life has changed,
12:07:57 25 like, a lot since then. I'm not allowing, you know, my

12:08:05 1 kids to watch TV or to see the news or to express their
12:08:10 2 feelings about the war, or I'm not expressing my
12:08:14 3 feelings about anything because I'm scared that whatever
12:08:16 4 happen to Marwan will happen to me or my children. So
12:08:22 5 it's just like this is not the life we, you know, seeked
12:08:26 6 here in America. I thought that this is the country of
12:08:29 7 freedom, the freedom of speech. And now, like, okay,
12:08:32 8 if you're against, like, the war or against anything
12:08:35 9 that the government has to do, so it's like you can't
12:08:41 10 express your feelings.

12:08:45 11 MR. BOSS: Thank you.

12:08:52 12 MR. GETZ: No questions.

12:08:54 13 THE COURT: Ma'am, you may step down.

12:09:01 14 MR. BOSS: By means of transcript and
12:09:02 15 videotape, we'll call -- the order of the tape has three
12:09:13 16 depositions back to back. And we can obviously
12:09:17 17 interrupt them at any time, even right now.

12:09:22 18 THE COURT: Do you have another live
12:09:24 19 witness?

12:09:25 20 MR. BOSS: We do have one other live witness
12:09:27 21 present. And we have a witness who we were intending
12:09:30 22 to call by telephone.

12:09:32 23 THE COURT: Why don't we -- we'll follow the
12:09:36 24 sequence. Why don't we do this, then we'll take a
12:09:39 25 break. How long do you think it will take?

12:09:42 1 MR. BOSS: I would think the total will be
12:09:45 2 less than an hour, maybe a touch over if Mr. Getz
12:09:49 3 continues his cross-examination in a similar fashion.

12:10:01 4 (Discussion had off the record.)

12:10:04 5 MR. GETZ: Just, Your Honor, this puts us in
12:10:05 6 somewhat of a difficult position in that Mr. Boss still
12:10:11 7 hasn't affirmatively told us if Dr. El-Hindi is going to
12:10:15 8 testify via phone, the government as a whole, would
12:10:19 9 testify via telephone. My understanding is if he was
12:10:22 10 going to testify at all, it would be by TV.

12:10:27 11 THE COURT: Unfortunately the Court IT test
12:10:30 12 failed, and they weren't able to establish a test with
12:10:34 13 the proposed IT test site in Budapest.

12:10:36 14 MR. BOSS: Maybe if they can give it a try
12:10:38 15 again and have them work on it.

12:10:45 16 THE COURT: They've tried, and it doesn't
12:10:47 17 work.

12:10:48 18 I'll overrule the government's objection and
12:10:50 19 let him -- this is the brother?

12:10:52 20 MR. BOSS: Yes.

12:10:53 21 MR. SOFER: Just to clarify --

12:10:56 22 MR. HERDMAN: What's holding up the decision
12:10:58 23 by the defense as to whether to call him? Yousef is a
12:11:01 24 different witness in the sense it could require more
12:11:04 25 preparation for cross-examination.

12:11:07 1 MR. HARTMAN: He's on our witness list.

12:11:10 2 MR. HERDMAN: I understand.

12:11:12 3 MR. BOSS: Judge, could we have five
12:11:14 4 minutes, please?

12:11:15 5 MR. HERDMAN: I don't think it's a
12:11:17 6 ridiculous request to ask if they're going to call him
12:11:20 7 or not.

12:11:21 8 THE COURT: That's fair. Why don't you
12:11:25 9 take five minutes. In any event, we don't need Tracy
12:11:29 10 for at least a half an hour, right?

12:11:34 11 MR. BOSS: That's correct, Judge.

12:11:34 12 (Transcripts are read into the record.)

13:28:45 13 (Recess taken.)

13:32:05 14 MR. BOSS: As a follow-up to the last
13:32:08 15 witness, Dr. Mark Kaushal, EMSS, who gave testimony to
13:32:12 16 his business at the time, Source America and its
13:32:15 17 relationship with EMSS, we'd offer Defendant's
13:32:18 18 Sentencing Exhibits 1 and 2, a brochure essentially that
13:32:24 19 depicts, if I may, contact information in the printed
13:32:44 20 university materials for Marwan El-Hindi's business,
13:32:48 21 EMSS, including his phone number, as well as contact
13:32:55 22 information. It also shows Source America in its
13:32:59 23 contact information. It is printed distinctly for
13:33:05 24 Comenius University in Bratislava. We also offer
13:33:10 25 Defendant's Exhibit 2, a catalog for information for

13:33:13 1 students coming to Comenius University.

13:33:17 2 THE COURT: Any objection?

13:33:31 3 MR. HERDMAN: I would point out the contact
13:33:33 4 information that is on that brochure is that of Marwan
13:33:35 5 El-Hindi prior to his current address, so I just would
13:33:38 6 ask Mr. Boss what's the date of that particular
13:33:42 7 document? It's certainly not current is, I guess, the
13:33:44 8 point.

13:33:45 9 MR. BOSS: It isn't being offered for
13:33:47 10 currency. It's the fact Source America and EMSS worked
13:33:50 11 together, in hand with the University.

13:33:57 12 We call Mohammed El-Hindi.

13:34:13 13 (The witness was sworn by the clerk.)

13:34:57 14 THE COURT: Will you tell me your name.

13:34:59 15 THE WITNESS: My name is Mohammed Othman
13:35:02 16 El-Hindi.

13:35:02 17 THE COURT: Your middle name, how do you
13:35:05 18 spell that.

13:35:06 19 THE WITNESS: El-Hindi, E-l H-i-n-d-i.

13:35:10 20 THE COURT: You said --

13:35:12 21 THE WITNESS: My father's name is --

13:35:14 22 MR. BOSS: I can volunteer for the Court his
13:35:20 23 middle name is Othman, O-t-h-m-a-n.

13:35:24 24 THE COURT: And where do you live?

13:35:26 25 THE WITNESS: I live in the United Arab

13:35:31 1 Emirates.

13:35:31 2 THE COURT: UAE. What city there?

13:35:35 3 THE WITNESS: Living in Sharjah; this is
13:35:37 4 next to Dubai, five kilo.

13:35:42 5 THE COURT: And how do you spell the
13:35:44 6 community?

13:35:46 7 THE WITNESS: S-h-a-r-j-a-h.

13:35:52 8 THE COURT: How long have you lived in the
13:35:54 9 UAE?

13:35:56 10 THE WITNESS: Thirteen years almost.

13:35:58 11 THE COURT: What do you do?

13:35:59 12 THE WITNESS: I'm working with internet
13:36:03 13 supervisor for internet service provider, so I'm
13:36:07 14 handling the operation issues.

13:36:10 15 THE COURT: How long have you had that job?

13:36:12 16 THE WITNESS: After my graduation, almost 13
13:36:17 17 years.

13:36:17 18 THE COURT: Okay. And what's your
13:36:19 19 education?

13:36:19 20 THE WITNESS: My education is computer
13:36:21 21 information system.

13:36:22 22 THE COURT: Where did you get your degree?

13:36:24 23 THE WITNESS: I get my degree in An-Najah
13:36:29 24 University.

13:36:29 25 THE COURT: Are you a native of Palestine?

13:36:32 1 THE WITNESS: A native of Palestine.

13:36:35 2 Originally from Palestine. Yes, originally from
13:36:38 3 Palestine.

13:36:39 4 THE COURT: You are Mr. El-Hindi's brother,
13:36:40 5 I take it?

13:36:41 6 THE WITNESS: Yes.

13:36:42 7 THE COURT: Older or younger?

13:36:43 8 THE WITNESS: He is the -- I am number three
13:36:49 9 in the boys. I have a second -- the fourth one's name
13:36:56 10 is Ahmed. I'm older than him.

13:36:59 11 THE COURT: Go ahead.

13:37:01 12 MR. BOSS: Thank you, Judge.

13:37:06 13 - - -

13:37:06 14 MOHAMMED OTHMAN EL-HINDI, DIRECT EXAMINATION

13:37:07 15 BY MR. BOSS:

13:37:07 16 Q. Mr. El-Hindi, when did you arrive from the UAE?

13:37:10 17 A. Last Friday.

13:37:11 18 Q. If any of my questions are difficult for you to
13:37:15 19 understand, please stop me and ask for a clarification.

13:37:17 20 A. Thank you very much.

13:37:19 21 Q. The company that you work for in the UAE, is it a
13:37:25 22 large company?

13:37:26 23 A. It's an enterprise company. Yes. It's a big
13:37:30 24 company.

13:37:31 25 Q. How big?

13:37:32 1 A. It is enterprise.

13:37:33 2 Q. Enterprise. By that you mean international?

13:37:35 3 A. Yes, it's international. They have a monthly --

13:37:43 4 Q. How many people are employed there?

13:37:45 5 A. In the UAE, 7,000.

13:37:48 6 Q. You've been with them 13 years?

13:37:51 7 A. 13 years.

13:37:52 8 Q. Are you a supervisor or executive now?

13:37:54 9 A. Supervisor for internet services.

13:37:57 10 Q. Very good. Mr. El-Hindi, your relation to
13:38:00 11 Marwan, he is your oldest brother?

13:38:02 12 A. Yes.

13:38:03 13 Q. And how old are you?

13:38:04 14 A. I am 38.

13:38:07 15 Q. 38?

13:38:08 16 A. 38.

13:38:08 17 Q. How old were you when Marwan moved to the United
13:38:12 18 States?

13:38:12 19 A. I -- when he moved to the United States, I was in
13:38:17 20 the high school.

13:38:20 21 Q. Have you kept in touch with him since he moved to
13:38:25 22 the United States?

13:38:25 23 A. Yes, by telephone.

13:38:27 24 Q. How frequently did you talk to him?

13:38:29 25 A. Talk to him almost -- you know, depends on the

13:38:34 1 family occasions, or if you can say sometimes weekly,
13:38:39 2 sometimes two in a month, something like this. And
13:38:45 3 then an hour, you know, then holiday.

13:38:51 4 Q. Holiday?

13:38:51 5 A. Holidays, exactly.

13:38:53 6 THE COURT: Maybe 20, 25 times a year?

13:38:57 7 THE WITNESS: A year, smaller than that.
13:38:59 8 Smaller.

13:39:00 9 Q. More than that?

13:39:01 10 A. Yes.

13:39:01 11 THE COURT: More than that?

13:39:03 12 THE WITNESS: More than that.

13:39:05 13 Q. I understand Marwan operated a business that
13:39:08 14 we've heard about called EMSS.

13:39:10 15 A. Yes.

13:39:10 16 Q. And that your other brother, Yousef, was also
13:39:13 17 involved in that business?

13:39:14 18 A. Yes.

13:39:15 19 Q. Did you do anything for them?

13:39:17 20 A. Registered the domain name, which you can post
13:39:26 21 information for the site, and you reserve it so nobody
13:39:28 22 can take the name.

13:39:29 23 Q. Did you host the site also or participate in
13:39:32 24 that?

13:39:33 25 A. Only on that instruction. Then they give the

13:39:37 1 design for the site for --

13:39:43 2 Q. Did you assist in designing the website itself?

13:39:46 3 A. Not much, but I do the layout only.

13:39:51 4 Q. Other than that work you did regarding the
13:39:54 5 website of EMSS, when you spoke with Marwan El-Hindi,
13:39:58 6 what types of matters did you speak about?

13:40:00 7 A. We are talking about family's issues and about we
13:40:05 8 are very close to his kids, especially the first one
13:40:11 9 that come of the family. I mean to say -- if I can
13:40:18 10 express it. They are the new member of our family from
13:40:23 11 our brother and sister.

13:40:25 12 Q. I understand that you also called Marwan after
13:40:28 13 the unfortunate tragedy of 9/11, September 11?

13:40:33 14 A. Yes.

13:40:33 15 Q. Why did you call him then?

13:40:34 16 A. Just to know what is the status. I call my
13:40:38 17 sister; I call my cousin; I call a lot of friends to
13:40:46 18 know are they okay.

13:40:47 19 Q. Why were you concerned?

13:40:48 20 A. Because the concern this is a terrorist attack
13:40:50 21 and they could be at the hotel, they could be at
13:40:54 22 anywhere.

13:40:55 23 Q. Did you discuss with him conditions regarding
13:40:58 24 Muslims here in the United States?

13:41:00 25 A. I don't remember that I discussed these issues.

13:41:05 1 Q. Did you talk about politics with Marwan while
13:41:07 2 talking on the phone?

13:41:09 3 A. I don't remember if I talk, but almost I do
13:41:13 4 not -- we are not talking politics over the phone.

13:41:20 5 Q. Did Marwan ever tell you that he thought the
13:41:22 6 conditions in Iraq were bad or the war in Iraq was bad?

13:41:25 7 A. No, never.

13:41:26 8 Q. Did he talk to you about Osama bin Laden or
13:41:32 9 Al-Qaeda?

13:41:32 10 A. Never.

13:41:32 11 Q. What was the focus of your discussions with him
13:41:35 12 when you did talk?

13:41:35 13 A. We are talking about family issues, especially
13:41:41 14 his kids, his status. Sometimes, you know, about what
13:41:49 15 is his condition, and holidays, so this is the issues
13:41:54 16 about.

13:41:55 17 Q. Now, I heard from Yasmin that you had a family
13:41:59 18 reunion of sorts this summer in Jordan. Did you go to
13:42:03 19 that?

13:42:03 20 A. Yasmin?

13:42:06 21 Q. From your sister Manal.

13:42:08 22 A. Yes. Manal. I join them, and we spent a lot
13:42:13 23 of time with Marwan's family.

13:42:15 24 Q. Did you take your children as well?

13:42:16 25 A. Of course, yes.

13:42:17 1 Q. And the house that you went to, the family
13:42:19 2 reunion was in your family house in Jordan?

13:42:22 3 A. It is our family's, actually belongs to my
13:42:26 4 father, exactly.

13:42:27 5 Q. Do you own part of that, or did you have anything
13:42:29 6 to do with building on to it?

13:42:30 7 A. Actually, we built after my father death. We
13:42:36 8 built, me and Yousef, we built three stories because
13:42:41 9 it's already the two stories, so we built the three
13:42:44 10 stories.

13:42:44 11 Q. Now, I understand, you've told me already that
13:42:47 12 there's a tradition about building on to the family
13:42:50 13 house?

13:42:50 14 A. Exactly.

13:42:51 15 Q. Can you explain that to the Judge? How is that
13:42:54 16 done?

13:42:54 17 A. After my father death, actually, the building is
13:42:58 18 our home and common for all family. I mean to say it
13:43:03 19 is a wealth that should be distributed as Islam --

13:43:08 20 Q. Inherited?

13:43:11 21 A. Okay. The girls will take this part, and the
13:43:14 22 boys will take this part, and the mother will take this
13:43:17 23 part.

13:43:17 24 Q. Now, did you discuss with Marwan El-Hindi about
13:43:20 25 whether he wanted to build on to the house?

13:43:22 1 A. Exactly. I take all my brother permission to
13:43:26 2 start building on the -- on our home because there
13:43:32 3 should be agreement because I cannot build any spawn, if
13:43:37 4 you want to say, before I did get their permission.

13:43:46 5 Q. Let me make sure I understand this. It's my
13:43:48 6 understanding that Marwan, being the oldest son, had the
13:43:51 7 first option of building on to the house; is that
13:43:54 8 correct?

13:43:54 9 A. Yes. Exactly.

13:43:56 10 Q. Did you --

13:43:56 11 A. This is a type of tradition. But it's not a
13:43:59 12 type of rule.

13:44:00 13 Q. Did you ask Marwan if he wanted to build on to
13:44:02 14 the house?

13:44:02 15 A. I asked him, yes.

13:44:04 16 Q. What did he say?

13:44:04 17 A. He says he's not interested of that at all.

13:44:07 18 Q. Did he tell you why?

13:44:08 19 A. He tell me because his life is in United States,
13:44:11 20 and he's considering United States is his home country,
13:44:15 21 and he will never think to come back to live in Jordan
13:44:21 22 because he's interested of educating his people there in
13:44:25 23 the United States, and he's considering that one his
13:44:29 24 homeland country.

13:44:42 25 Q. Have you had discussions with Marwan about how he

13:44:44 1 felt about the United States?

13:44:45 2 A. About --

13:44:46 3 Q. Before his arrest, did Marwan tell you how he
13:44:49 4 felt about living in the United States?

13:44:51 5 A. It's always in our family, you know, it's you
13:44:58 6 feel the pleasure if you live in the United States.
13:45:03 7 Sure, you have a lot of things that can help your
13:45:10 8 family: Education, freedom, all this stuff. So this
13:45:14 9 is the most discussion we have discussed with family.

13:45:22 10 Q. Did Marwan consider the United States his home or
13:45:24 11 elsewhere?

13:45:25 12 A. Sure. United States.

13:45:30 13 Q. That's really just about all I have. Is there
13:45:33 14 anything else you think the judge needs to hear from you
13:45:35 15 before deciding a proper sentence?

13:45:37 16 A. Yes. Actually, my family, Your Honor, we
13:45:44 17 consider it as in Jordan, our El-Hindi family, they
13:45:48 18 consider us as the most educated family in our district,
13:45:55 19 if you want to say. I do believe that the reason of
13:45:59 20 that is my father. My father, he was educated in the
13:46:02 21 United States at Ohio. He graduated from here from
13:46:06 22 University of Ohio. That was in 1954. My father
13:46:12 23 educated us that the best place in the world that you
13:46:17 24 can have better education, you have better freedom, you
13:46:21 25 can have multinational country, you can have

13:46:27 1 multinational language, you can say is the United
13:46:30 2 States. That's why the first step for Marwan is going
13:46:34 3 to the United States. Actually, I was wishing to come
13:46:36 4 in here to see this great country in reality and to see
13:46:40 5 that how this is a great nation, which I do believe my
13:46:46 6 father, he was 100 percent correct of what he's telling
13:46:51 7 about the United States.

13:46:53 8 MR. BOSS: Thank you. The prosecutor might
13:46:55 9 have a couple questions.

13:46:57 10 THE WITNESS: Thank you.

13:46:57 11 - - -

13:46:57 12 MOHAMMED OTHMAN EL-HINDI, CROSS-EXAMINATION

13:47:02 13 BY MR. GETZ:

13:47:03 14 Q. Good afternoon. A couple questions. This
13:47:05 15 conversation you had with Marwan where you asked him if
13:47:08 16 he was intending to build on to the family home --

13:47:10 17 A. Yes.

13:47:10 18 Q. -- when did that take place?

13:47:11 19 A. It take after place after my father death. My
13:47:15 20 father death, it was 2004. You can say after that one,
13:47:20 21 it was in November, 2004. So you can say it is
13:47:26 22 after -- you can say six month, seven months, something
13:47:29 23 like that. But it is after 2004.

13:47:31 24 Q. So it would have been either late 2004 or early
13:47:35 25 2005, somewhere in that --

13:47:38 1 A. Yes, in this period of time.

13:47:40 2 Q. And I take it you're intending to go back and
13:47:43 3 live in Jordan at some point?

13:47:44 4 A. For myself?

13:47:45 5 Q. Yes.

13:47:46 6 A. Yes. I'm intending to go there because, you
13:47:49 7 know, for Marwan, he's American national. Okay. He is
13:47:53 8 holding the citizenship of United States. But for me,
13:47:58 9 I am -- you can say I'm in the gulf area. So I will
13:48:05 10 not have the all facilities or all the -- you can say
13:48:12 11 the benefits, which is the people who are holding the
13:48:17 12 citizenship of the gulf to continue my life there.

13:48:26 13 MR. GETZ: Just a moment.

13:48:26 14 (Discussion had off the record.)

13:48:28 15 MR. GETZ: Thank you very much. No other
13:48:29 16 questions.

13:48:30 17 THE WITNESS: Thank you very much.

13:48:32 18 MR. BOSS: Thank you very much for coming.

13:48:34 19 THE COURT: You're free to go or welcome to
13:48:36 20 stay. Have a safe trip home.

13:48:38 21 THE WITNESS: Thank you.

13:48:55 22 MR. HARTMAN: Your Honor, we don't have any
13:48:56 23 more witnesses at this time, so I'd like to present
13:49:04 24 argument to the Court.

13:49:55 25 THE COURT: Do you have a microphone?

13:49:57 1 MR. HARTMAN: I don't. If you'd like me to
13:49:59 2 use it, I can.

13:50:05 3 THE COURT: You may proceed.

13:50:06 4 MR. HARTMAN: Thank you. The Court
13:50:17 5 yesterday and the government both agreed, Judge, that
13:50:24 6 there wasn't another case like ours. And the
13:50:28 7 government even said we couldn't delay ours long enough
13:50:32 8 so that they would be first. We don't have the benefit
13:50:38 9 of another Court's ruling. And as we talked about it,
13:50:44 10 that means that you are going to set a sort of precedent
13:50:47 11 with your sentence in this case. Not only will this be
13:50:54 12 the first sentencing in a terrorism conspiracy in which
13:51:01 13 the government's informant, if you will, was involved
13:51:05 14 from the beginning, but it will also be sort of a
13:51:13 15 precedent for how different conspirators are going to be
13:51:17 16 treated. The government clearly is asking you to paint
13:51:23 17 all of these men with the same brush, to take a cookie
13:51:28 18 cutter approach to the sentencing.

13:51:32 19 THE COURT: I think what you're saying or
13:51:34 20 the direction you're headed in is the labels "terrorism"
13:51:39 21 and "terrorist" are, in a sense, easy to apply, but very
13:51:49 22 difficult to peer behind and make what ought to be
13:51:58 23 distinctions, differences, understand the differences,
13:52:04 24 levels, gradations and so forth.

13:52:07 25 MR. HARTMAN: You're absolutely correct.

13:52:10 1 THE COURT: Let's put it this way: A bank
13:52:12 2 robber is a bank robber. We all know what a bank robber
13:52:16 3 is. Usually the question is: Is he armed or unarmed,
13:52:19 4 and that's it. And we don't talk about conspiring to
13:52:27 5 provide material support to terrorism and a terrorism
13:52:34 6 case in the sense it's a viewed somewhat differently and
13:52:51 7 somewhat through that prism, to mix metaphors, a label
13:52:58 8 rather than distinct in its individual component.

13:53:03 9 MR. HARTMAN: You're absolutely right. And
13:53:05 10 the three defendants in this case all have different
13:53:08 11 levels of culpability. And --

13:53:13 12 THE COURT: Let me say this. Mr. Sofer
13:53:16 13 mentioned this. And I don't think anybody objected at
13:53:21 14 the outset when I said to the jury, practically all -- I
13:53:24 15 think all of the venire, this isn't a capital T
13:53:30 16 terrorism case. And a more discrete and finally tuned
13:53:43 17 definition of a terrorist is somebody who plans to bomb,
13:53:47 18 who pulls the trigger, who brings down the airliner, who
13:53:51 19 commits the act that is historically and traditionally
13:53:58 20 defined as terrorism. And they're using that label
13:54:09 21 sort of more broadly, and I think somewhat inaccurately.

13:54:14 22 MR. HARTMAN: I think very inaccurately.

13:54:16 23 THE COURT: It's a shorthand, like any
13:54:18 24 shorthand expression and abbreviation, it can be used,
13:54:29 25 but it simply does not convey or connote fully and

13:54:35 1 accurately the content of the message that's being
13:54:40 2 communicated. It might under some circumstances. But
13:54:44 3 it's good, I think in this situation at least, to set
13:54:50 4 the label to one side and look at the individuals and
13:54:56 5 the individual defendant. That's what we're here for.

13:54:58 6 MR. HARTMAN: I agree. Maybe the reason for
13:54:59 7 the label is that it's not very sexy to call someone a
13:55:03 8 material supporter.

13:55:15 9 I think it's amazing that the government has
13:55:19 10 the temerity to stand up here and tell you that these
13:55:25 11 men all deserve the same sentence after Mr. Sofer
13:55:29 12 yesterday stood up and spent so much time hammering the
13:55:36 13 issue that Amawi's conduct was so much worse, that he
13:55:41 14 deserved the highest sentence. That was clearly the
13:55:48 15 message yesterday. His conduct was so much worse.
13:55:53 16 How many times he said, "Especially for this defendant"
13:55:57 17 when he was talking about the things that happened and
13:56:00 18 the reasons that there should be a life sentence,
13:56:02 19 "Especially for this defendant." But then they get up
13:56:06 20 today, and they've changed the tune completely. They
13:56:11 21 say that El-Hindi deserves the life sentence.

13:56:16 22 In light of what you said earlier, I think
13:56:20 23 it's pretty clear the Court wasn't thinking that. But
13:56:24 24 the government can ask for whatever they want.
13:56:28 25 However, they have to accurately portray the evidence

13:56:30 1 when they do that. And that's not what happened in the
13:56:34 2 government's argument. The evidence was misstated.
13:56:37 3 And there are some points that I need to correct.

13:56:41 4 THE COURT: In the argument that Mr. Getz
13:56:44 5 made or the argument that Mr. Sofer made?

13:56:47 6 MR. HARTMAN: In the argument that Mr. Getz
13:56:48 7 made.

13:56:54 8 First of all, the comment to Zubair Ahmed
13:57:06 9 about, "You're with us or you're not." El-Hindi never
13:57:09 10 said that to Zubair Ahmed. The government told you he
13:57:12 11 did. He didn't. He said that to Darren Griffin.
13:57:15 12 That's the evidence we heard.

13:57:22 13 The evidence that came out at trial was they
13:57:26 14 couldn't -- there was no proof that El-Hindi registered
13:57:29 15 on the Ekhlaas website. They couldn't determine that
13:57:33 16 with certainty.

13:57:41 17 THE COURT: Candidly, I hadn't much thought
13:57:48 18 about that, the number and the Philistine. I think that
13:57:52 19 the jury could find -- and you're certainly welcome to
13:57:57 20 argue to the contrary because I think that's the purpose
13:58:00 21 of sentencing; we don't know if the jury found that as a
13:58:03 22 fact or not, so I'm not concluding it, but in listening
13:58:07 23 to the evidence at the time, sure, there may be some
13:58:12 24 room for doubt. I wouldn't be surprised if you asked
13:58:16 25 the 12 jurors: Did you find the evidence to be proved

13:58:20 1 beyond a reasonable doubt or more likely than not, I
13:58:22 2 think at least it's more likely than not.

13:58:25 3 MR. HARTMAN: He never referred to himself
13:58:26 4 as the Philistine. Never did that. And Darren
13:58:30 5 Griffin used that computer all the time. Griffin
13:58:33 6 admitted that on the stand. And Griffin used the term
13:58:36 7 Philistine on February 16. I don't think we can say
13:58:41 8 it's more likely.

13:58:47 9 El-Hindi never referred to Griffin as a
13:58:50 10 jihadi. The conversation that was said, El-Hindi was
13:58:53 11 talking about someone else.

13:58:54 12 THE COURT: In any event, your contention is
13:58:57 13 the proof simply is insufficient, even upon a standard,
13:59:05 14 to conclude that he was the user, he was the accessor of
13:59:10 15 that website. But I believe Mr. Herdman told me he was
13:59:17 16 the one that caused the cookies to be put on the
13:59:22 17 computer, or was that the e-mail?

13:59:24 18 MR. HARTMAN: That was the cookies --

13:59:27 19 MR. HERDMAN: I can answer, if you need it.

13:59:30 20 THE COURT: That's okay.

13:59:31 21 MR. HARTMAN: That was the cookies. And
13:59:33 22 the testimony was also the cookie can get on a website
13:59:36 23 without the user doing anything at all. The jihadi --

13:59:44 24 THE COURT: Like barnacles on a boat.

13:59:47 25 MR. HARTMAN: The jihadi term, El-Hindi was

13:59:49 1 not referring to Griffin as a jihadi. He was talking
13:59:53 2 to someone else referring to Griffin as a jihadi. And I
13:59:59 3 just want to be clear about that.

14:00:03 4 Mr. Getz stood up and told you that El-Hindi
14:00:06 5 said he could get them grants, and that's not accurate.
14:00:09 6 On February 16, El-Hindi said -- it's on the recording;
14:00:12 7 he made it very clear: These grants are not for
14:00:16 8 overseas. They weren't for the activity that Griffin
14:00:19 9 was talking about.

14:00:33 10 THE COURT: I believe the government's
14:00:34 11 contention is that it's fair to infer that were other
14:00:40 12 grants obtained, there was a likelihood some of that
14:00:46 13 money may have been applied to the attainment of the
14:00:50 14 objective of the conspiracy.

14:00:51 15 MR. HARTMAN: It's purely speculation.
14:00:54 16 El-Hindi in the recordings that we heard never said that
14:00:56 17 it was his intention to do that. He talked about
14:00:59 18 getting grants, and he talked about using the money for
14:01:02 19 different purposes. He talked about it for a school.
14:01:05 20 He talked about it for a refugee program for Muslims.
14:01:10 21 There were a lot of different things. But he never
14:01:13 22 said that he was going to use that. And I think it's
14:01:15 23 too speculative to draw that conclusion. But this --
14:01:19 24 this is a great example. These phone calls.

14:01:24 25 THE COURT: I'm not sure the record knows

14:01:27 1 what you're talking about.

14:01:28 2 MR. HARTMAN: I am holding Exhibit 7, which
14:01:30 3 is the summary of phone contacts. And these phone
14:01:34 4 contacts between Amawi and El-Hindi, the ones on the
14:01:41 5 satellite phone I said were Griffin. The ones to the
14:01:46 6 phone calls -- there was another issue of inaccuracy,
14:01:50 7 but you know what's important? You know why the
14:01:53 8 government shows these phone calls as being so
14:01:55 9 important, why they harp on things like this? Because
14:01:58 10 there's no training to show you. There's no meeting
14:02:02 11 where this stuff happens to show you. So this is all
14:02:06 12 they have, Judge.

14:02:22 13 Mr. Getz said that Mr. El-Hindi's role was
14:02:26 14 to recruit, encourage, and facilitate the participation
14:02:30 15 of protégés. He didn't facilitate any participation.
14:02:35 16 There was talk. There was some talk. But there was
14:02:39 17 no participation. I'm going to explain to you later
14:02:44 18 why it's not that clear that El-Hindi recruited the
14:02:49 19 Ahmeds and, in fact, he didn't recruit the Ahmeds. You
14:02:53 20 told us yesterday or last week that El-Hindi wasn't
14:02:57 21 entitled to the reduction in the sentence level for
14:03:00 22 acceptance of responsibility. And the reason you
14:03:02 23 thought was because he recruited the Ahmeds. But you
14:03:05 24 also said you're free to tell me if you think I'm wrong
14:03:09 25 about that. Respectfully, I think you're wrong about

14:03:12 1 that. And I will explain that. But for the
14:03:14 2 government to stand up and say that this is what
14:03:16 3 happened isn't accurate. They can say that this is
14:03:20 4 what El-Hindi said was going to happen, or this is what
14:03:24 5 he told people. But there was never any participation
14:03:29 6 that happened as a direct result of his communications.

14:03:34 7 MR. GETZ: Your Honor, I know Mr. Hartman
14:03:35 8 wants to relitigate this case. These arguments have
14:03:39 9 nothing to do with mitigation.

14:03:42 10 THE COURT: Candidly, at least this one I
14:03:45 11 think does, that the issue, in all candor, of reaching
14:03:51 12 out and recruiting people is important. That's what
14:03:56 13 I'll hear about and hear you out. Once again, the jury
14:04:00 14 verdict doesn't tell us which of the various factual
14:04:04 15 issues they found. And I think I'm going to give Mr.
14:04:08 16 Hartman the opportunity to talk about that. And you
14:04:10 17 can respond.

14:04:10 18 MR. GETZ: Well, Your Honor, my concern here
14:04:12 19 is if he's talking merely, for example, on this
14:04:14 20 particular point of whether or not the defendant
14:04:17 21 recruited the Ahmeds or didn't recruit the Ahmeds, we
14:04:21 22 could spend the next two days presenting evidence back
14:04:23 23 and forth on that particular point. All we're doing is
14:04:27 24 going back over the evidence of the case. It doesn't
14:04:29 25 have anything to do with the purpose of this hearing at

14:04:33 1 this point in the hearing.

14:04:35 2 THE COURT: I think it does because it goes
14:04:36 3 to the circumstances and nature of the offense. And I
14:04:41 4 think you are absolutely correct, two days worth of back
14:04:49 5 and forth on this subject is going to be proved -- I'll
14:04:58 6 let you brief that. Because it is conduct attributed
14:05:03 7 to the defendant that plays a significant role in my
14:05:09 8 decision. I'm going to let him go ahead.

14:05:12 9 MR. HARTMAN: The reason I have to do it is
14:05:14 10 because the government stood up and said he facilitated
14:05:16 11 participation. They're asking for a life sentence.
14:05:19 12 My client's life is on the line. I'm not going to let
14:05:22 13 them stand up here and say things that didn't --

14:05:24 14 THE COURT: If he didn't, quote, "recruit"
14:05:27 15 the Ahmeds, how did they come to show up in Cleveland
14:05:31 16 and otherwise be linked in?

14:05:35 17 MR. HARTMAN: Well, according to the record,
14:05:38 18 El-Hindi was taking them to Cleveland before he ever
14:05:41 19 knew Griffin was going to be there. The phone call
14:05:44 20 between El-Hindi and Griffin made it very clear,
14:05:49 21 El-Hindi said he was going to the conference with the
14:05:53 22 two boys. And Griffin said he's going to be there too.
14:05:58 23 It was happenstance that they happened to be there
14:06:02 24 together. Now, would El-Hindi have gotten those boys
14:06:06 25 together with Griffin some other time, some other way?

14:06:11 1 We don't know that. But he didn't take them there to
14:06:13 2 Cleveland in order to meet Griffin.

14:06:17 3 THE COURT: Am I incorrect in recollecting
14:06:20 4 that at some point El-Hindi made some mention about two
14:06:28 5 of them?

14:06:31 6 MR. HARTMAN: To Griffin?

14:06:32 7 THE COURT: Yes. At least in some context
14:06:34 8 or setting which it could be inferred that that was with
14:06:40 9 an eye towards involving them.

14:06:42 10 MR. HARTMAN: No, that's correct. He did.
14:06:44 11 He told Griffin, There's two brothers, and they want to
14:06:47 12 train. And then he laughed. And then he told Griffin
14:06:50 13 about these brothers. But El-Hindi --

14:06:53 14 THE COURT: Was that before or after the
14:06:56 15 July 4?

14:06:57 16 MR. HARTMAN: That was before the
14:06:58 17 conference. And Griffin picked up on that. And
14:07:00 18 Griffin went after that. El-Hindi got a phone call
14:07:04 19 from Zubair Ahmed's father --

14:07:08 20 THE COURT: At the very least, whether you
14:07:10 21 call it recruitment or not, I think he is responsible
14:07:15 22 for their involvement. That may be a distinction that
14:07:24 23 doesn't make a difference, but candidly I think it
14:07:27 24 might. Once again, we're dealing with semantics.

14:07:30 25 MR. HARTMAN: But then don't you have to

14:07:32 1 admit he's also responsible for the fact that they
14:07:34 2 didn't have any further involvement and they never ever
14:07:37 3 met with Griffin after July 4?

14:07:39 4 THE COURT: No, because I attribute that
14:07:43 5 point to them rather than him.

14:07:45 6 MR. HARTMAN: Well, all the opportunities
14:07:46 7 that he had, he had them in Toledo four times and never
14:07:50 8 took them to see Griffin.

14:07:52 9 THE COURT: Is that in the record?

14:07:53 10 MR. HARTMAN: Yes. He was in Chicago on
14:07:58 11 business with Mark Kaushal, you just heard. And he
14:08:02 12 went to Chicago on a regular basis. He never made that
14:08:06 13 meeting happen. He didn't get called to go get them as
14:08:12 14 a terrorist or a recruiter. He got called and asked
14:08:15 15 for help.

14:08:18 16 THE COURT: I understand that. But then he
14:08:22 17 made some reference to them, and the context of which I
14:08:28 18 recall that being made was in anticipation of possibly
14:08:33 19 getting them involved. That's all. So I think I'm
14:08:37 20 perfectly content to moderate the notion of recruitment;
14:08:47 21 but for Mr. El-Hindi, they wouldn't be around. But for
14:08:52 22 Mr. El-Hindi, the Ahmeds are nowhere in sight. So in
14:08:58 23 that sense he's at least, quote, responsible. Whether
14:09:00 24 he sat down with them and said, Boy, do I have a great
14:09:06 25 opportunity for you. He stopped you from going over

14:09:13 1 when you were unprepared and ill-equipped and not
14:09:16 2 capable and not as useful as you can be, but we'll put
14:09:22 3 this deal together in Toledo, and we're going to train
14:09:25 4 people and train people to train people and teach you
14:09:27 5 how to do this, that, and the other thing, a recruitment
14:09:31 6 pitch, a sales pitch, I'm perfectly -- the typical sales
14:09:38 7 pitch, and I'm perfectly content to say nothing like
14:09:43 8 that ever happened. But at the very least, they're
14:09:47 9 here because he caused them to be here. Whatever that
14:09:53 10 means was -- whatever may have been said or not said,
14:09:59 11 take him out, whatever he didn't say, without him, the
14:10:08 12 Ahmeds wouldn't have been involved in this activity.

14:10:10 13 MR. HARTMAN: Okay. Yesterday there was an
14:10:12 14 argument by Mr. Bryan that Amawi's -- I forget what it
14:10:17 15 was. I wish I could cite it for you, but some action
14:10:20 16 that Amawi had taken was somehow minimized by the fact
14:10:26 17 that another time he said something that was contrary.
14:10:30 18 And Mr. Sofer said, No, it's the actions. It's not the
14:10:37 19 words; it's the actions. It's what you did. And the
14:10:40 20 factors under 18 U.S.C. 3553(a), they talk about a
14:10:47 21 defendant's conduct. They don't talk about the statute
14:10:51 22 of conviction. They talk about sentencing a defendant
14:10:55 23 based on the defendant's conduct. And throughout this
14:10:59 24 case, El-Hindi's words and actions don't always meet.
14:11:08 25 In a conspiracy case, your words will get you convicted.

14:11:12 1 Beyond a doubt that is a possibility. If you're
14:11:17 2 charged with the underlying offense, you need actions.
14:11:22 3 But in a conspiracy case, your words will do it. But
14:11:25 4 for the purposes of sentencing, we have to examine his
14:11:28 5 conduct and his conduct with the Ahmeds.

14:11:37 6 Although he caused them to be in Cleveland,
14:11:40 7 and he said things from that period on that made it
14:11:45 8 sound like he was going to facilitate their training to
14:11:50 9 get them trained, that was not part of his conduct that
14:11:54 10 he did that. Was it his intent at the time? I don't
14:12:00 11 know. He seemed to indicate it was in his words. But
14:12:04 12 he never did it. He never followed through with it.
14:12:09 13 So if we're going to sentence him for his conduct, that
14:12:11 14 has to be an important factor.

14:12:22 15 We are asking the Court --

14:12:29 16 THE COURT: Recollect for me, the trip to
14:12:31 17 Cleveland was the only time the Ahmeds were in Ohio?

14:12:42 18 MR. HARTMAN: No, they were in Toledo four
14:12:43 19 times.

14:12:44 20 THE COURT: Four times.

14:12:45 21 MR. GETZ: Your Honor, I'm not sure the
14:12:46 22 record indicates that.

14:12:47 23 THE COURT: I don't think it does.

14:12:52 24 MR. HARTMAN: I believe we had testimony to
14:12:56 25 that effect from an agent --

14:13:02 1 THE COURT: Let me ask you this: Assuming
14:13:05 2 it's in the record, what does the record then show about
14:13:11 3 why they were here and whom they saw and what they did?

14:13:14 4 MR. HARTMAN: They were here with El-Hindi.
14:13:17 5 I think that's it. My co-counsel is writing me a note.
14:13:23 6 Can I have just a minute?

14:13:27 7 THE COURT: You can also stand up, Mr. Boss,
14:13:29 8 and play a little tag team.

14:13:31 9 MR. BOSS: Thank you, Judge. Among the
14:13:32 10 matters that are in the record I believe are indications
14:13:35 11 that Yousef El-Hindi was driven to Ohio to Marwan's
14:13:39 12 house by the Ahmed cousins. We also have phone records
14:13:44 13 that had indicated that they were here. And I believe
14:13:49 14 that that's the source of Mr. Hartman's four business.

14:13:57 15 MR. HERDMAN: Judge --

14:13:58 16 MR. HARTMAN: Judge, this is argument.

14:14:00 17 THE COURT: Time out.

14:14:06 18 MR. HERDMAN: I just --

14:14:07 19 THE COURT: Time out. It seems to me it's
14:14:09 20 a little like the picture of Mr. Amawi. I'm not too
14:14:14 21 sure. The record shows what the record shows. And
14:14:17 22 I'm not sure it does too much good either way to
14:14:20 23 speculate what might or might not have happened

14:14:29 24 I think, Mr. Hartman, what you're saying is,
14:14:34 25 you brought it up yourself, Judge, they were here four

14:14:37 1 times, and you don't hear anything about that from Mr.
14:14:43 2 Griffin. We don't have any conversation; we don't have
14:14:45 3 any recorded testimony. We don't have any evidence of
14:14:49 4 anything that had anything to do with this conspiracy
14:14:53 5 having happened with these so-called recruits.

14:14:57 6 MR. HARTMAN: That's correct. And we
14:14:59 7 don't. And the point is, Judge, what I'm getting to is
14:15:01 8 we don't have any training that was facilitated by
14:15:05 9 El-Hindi.

14:15:07 10 MR. EL-KAHMAWY: Your Honor, with your
14:15:09 11 permission, what is not in the videos is as important as
14:15:15 12 what is in the videos. When the Ahmed boys were in
14:15:21 13 Columbus -- in Cleveland, Ohio during ICNA, they spent
14:15:24 14 three days there.

14:15:25 15 THE COURT: During?

14:15:28 16 MR. EL-KAHMAWY: The ICNA conference. And
14:15:31 17 they met on camera once with Darren Griffin. They
14:15:35 18 never met behind closed doors with Darren Griffin.

14:15:38 19 THE COURT: Again, we don't know what
14:15:44 20 transpired off camera, literally and figuratively. I
14:15:52 21 can't consider that. But we don't have any testimony.
14:16:02 22 And I think ultimately, Mr. Hartman, that's the point
14:16:04 23 you're making.

14:16:05 24 MR. HARTMAN: That's correct. There are a
14:16:07 25 lot of things that were discussed yesterday that I think

14:16:09 1 the Court has a handle on that apply to all three
14:16:14 2 defendants. And I don't want to be repetitive. I'm
14:16:16 3 going to move on and talk specifically about three of
14:16:20 4 the factors under 18 USC 3553.

14:16:25 5 THE COURT: What else would you contend were
14:16:30 6 misstatements by Mr. Getz? You said, Either you're with
14:16:36 7 us or against us, the Ekhlaas website having nexus with
14:16:43 8 Mr. El-Hindi or he having nexus or connection with it.
14:16:48 9 You used the question of using his experience with
14:16:54 10 grants to generate money.

14:16:58 11 MR. HARTMAN: Referring to Griffin as a
14:17:03 12 jihadi.

14:17:11 13 THE COURT: You say somebody else referred
14:17:13 14 to him in that fashion, or he was repeating someone
14:17:17 15 else?

14:17:17 16 MR. HARTMAN: Correct.

14:17:22 17 And asking Zubair, Are you with us or not.

14:17:25 18 THE COURT: I got that. And the issue of,
14:17:28 19 quote, recruitment. Anything else?

14:17:30 20 MR. HARTMAN: Well, I think there are some
14:17:32 21 other things on which I disagree in interpretation with
14:17:34 22 the government as we go through that will come up.

14:17:37 23 THE COURT: That's different than a mistake.

14:17:39 24 MR. HARTMAN: That's correct.

14:17:48 25 THE COURT: You may continue. Go ahead.

14:17:50 1 MR. HARTMAN: Thank you. Under 18 U.S.C.
14:17:58 2 3553(a)(2), it's the need for the sentence imposed to
14:18:00 3 reflect the seriousness of the offense, to afford
14:18:05 4 adequate deterrence, protect the public, and provide
14:18:09 5 educational and vocational training, et cetera.

14:18:13 6 Now, reflecting the seriousness of the
14:18:17 7 offense, it's just what you said earlier about this not
14:18:22 8 being a case about terrorism with a capital T. I
14:18:29 9 couldn't help noticing yesterday on the way into the
14:18:35 10 courthouse the lack of extra security. There were no
14:18:41 11 vans around, no extra agents, no paramilitary, no bomb
14:18:48 12 sniffing dogs, nothing. And in a sense this is not at
14:18:57 13 all like the case we started with. And I think, as I
14:19:01 14 look around the room, I think you and I were the only
14:19:05 15 ones there on day one. I think I was the only lawyer
14:19:08 16 on the first day from the defense side. But in many
14:19:12 17 ways, Judge, this is just like any other case. This is
14:19:17 18 not a big terrorism case. And it's not to say it's not
14:19:23 19 serious. But I would --

14:19:28 20 THE COURT: Don't get tripped up by the
14:19:30 21 label?

14:19:31 22 MR. HARTMAN: Right. Exactly. That's
14:19:33 23 exactly what I'm saying.

14:19:36 24 The need to afford adequate deterrence. A
14:19:39 25 life sentence is not necessary here.

14:19:41 1 THE COURT: I agree. I think we're talking
14:19:46 2 about personal and public deterrence, with a greater
14:19:50 3 emphasis on public deterrence. And even back up
14:19:53 4 further to Beccaria and Bentham, we're talking about
14:20:10 5 either incapacitation, punishment, deterrence, or
14:20:14 6 rehabilitation. Those factors may not be on the list,
14:20:24 7 but they underlie everything a criminal court ever does.
14:20:27 8 I think in this instance we are talking about punishment
14:20:30 9 and deterrence.

14:20:32 10 MR. HARTMAN: And the need to protect the
14:20:34 11 public.

14:20:36 12 THE COURT: That comes in in the
14:20:40 13 construct -- traditional construct both in terms of
14:20:44 14 incapacitation and deterrence. In other words, either
14:20:50 15 incapacitate the individual because he directly and
14:20:54 16 immediately is a danger; he's going to go on out the
14:21:01 17 front door and go about the same business.
14:21:03 18 Alternatively, protect the public by making an example
14:21:06 19 of the individual and so that other individuals who
14:21:13 20 might think about this will say, Wait a minute. Either
14:21:16 21 way, you're protecting the public by very different
14:21:21 22 penological purposes or policies that apply. Candidly,
14:21:30 23 I think after whatever term he may serve, and I think
14:21:34 24 the government itself by taking the approach that it has
14:21:39 25 in its argument as sort of the puller of the strings

14:21:46 1 rather than on the trigger, to speak metaphorically, is
14:21:51 2 indicating that in its view the involvement of Mr.
14:21:57 3 El-Hindi, without diminishing the government -- it's
14:22:01 4 standpoint of his culpability or the need for
14:22:09 5 punishment, was a different and distinct kind of
14:22:16 6 quality. He was, I think Mr. Getz acknowledged this,
14:22:21 7 he was sort of doing inside what Griffin was doing and
14:22:26 8 being asked to do on the outside of the group as it
14:22:30 9 were. In other words, help to move things along and
14:22:32 10 facilitate and so forth. He wasn't running around the
14:22:40 11 fields playing paint ball or whatever. He didn't go to
14:22:43 12 the shooting range, did he?

14:22:45 13 MR. HARTMAN: No, he didn't.

14:22:46 14 THE COURT: Okay. So I really think that
14:22:51 15 the government might not go that far, but I think the
14:22:54 16 issue of incapacitation is a significantly less concern
14:22:59 17 than punishment and public deterrence. And in thinking
14:23:05 18 about all of this, punishment serves an important public
14:23:09 19 function because it says -- it's the way a society
14:23:17 20 speaks to itself and sets its standards and says, This
14:23:21 21 kind of conduct is not followed. It says so in a case
14:23:31 22 like this even though the harm is a potential harm.
14:23:39 23 And as I tried to say earlier, perhaps not in these
14:23:44 24 terms, I think that's an important consideration. And
14:23:48 25 I think that's ultimately what motivates the government

14:23:51 1 in making the demand, even in Mr. El-Hindi's case, and
14:23:55 2 perhaps be in Mr. Mazloun's case: Judge, put these
14:23:58 3 people away for life so that the rest of the country and
14:24:01 4 the rest of the world know that we mean business, and
14:24:06 5 there is no mercy when you start not just talking about
14:24:12 6 but start heading in the direction, even if he didn't
14:24:17 7 get very far because the government was walking beside
14:24:20 8 you ever step of the way from the outset, nonetheless,
14:24:25 9 the consequences are potentially so grave and so
14:24:30 10 substantial, even if any individual defendant there was
14:24:34 11 no way those consequences could occur. So I think the
14:24:42 12 historical concept of punishment is important as well.

14:24:49 13 Obviously I'll make my decision based upon
14:24:52 14 the factors. And I'm trying to communicate to you, I
14:24:56 15 agree with you in terms of the incapacitation concept.
14:25:02 16 I really think the likelihood that Mr. El-Hindi, once he
14:25:07 17 is released from prison, once he returns to his family
14:25:10 18 here in the United States, that he's going to do
14:25:12 19 anything of this sort is very seldom. The government
14:25:16 20 disagrees. I think that likelihood will be monitored
14:25:20 21 and controlled through a lifetime of supervised release.
14:25:23 22 So incapacitation and personal deterrence --

14:25:31 23 MR. HARTMAN: I think it's important, Judge,
14:25:33 24 to keep in mind, though, that the conduct never got to
14:25:39 25 the point of action because he didn't make it. It's

14:25:45 1 not that the government was walking right alongside him.
14:25:49 2 He never did it. After February and March, he didn't
14:25:57 3 have -- he had very little contact with the
14:26:00 4 co-defendants. He had no contact with Zubair and
14:26:03 5 Khaleel, and he had very little contact with Griffin.
14:26:07 6 When Griffin called him in January a couple weeks before
14:26:11 7 he was arrested, Griffin says something like, How's
14:26:16 8 Wassim? And El-Hindi says, Who? And when he saw him,
14:26:23 9 he said, Boy, you've lost quite a bit of weight. It
14:26:27 10 had been months they hadn't seen each other. He wasn't
14:26:30 11 doing anything. He wasn't trying to make anything
14:26:32 12 happen.

14:26:40 13 THE COURT: So when would you say the last
14:26:43 14 contact or consequence, the last act of consequence
14:26:48 15 visible in this record occurred, giving the government
14:26:53 16 full credence? I'm not asking you to go against
14:27:02 17 yourself. I'm asking you what is the last thing the
14:27:08 18 government can point to as some kind of conduct or
14:27:13 19 consequence between Mr. Amawi, Mr. Mazloun, the Ahmeds,
14:27:19 20 or whatever?

14:27:20 21 MR. HARTMAN: Well, the government would
14:27:21 22 argue it was when El-Hindi and Griffin went to see Mr.
14:27:27 23 Dahabi about forming a nonprofit group. That was April
14:27:31 24 4. I don't think that was it. I think it was before
14:27:34 25 that.

14:27:36 1 THE COURT: But that would be ten months
14:27:38 2 before the arrest?

14:27:40 3 MR. HARTMAN: Correct. Correct. I don't
14:27:43 4 recall without looking specifically.

14:27:46 5 THE COURT: That's fine. I'm sure Mr. Getz
14:27:48 6 will give me its view as well. But I really want to
14:27:52 7 know what you think the government can point to with
14:27:55 8 some degree of plausibility, even if you disagree with
14:27:58 9 its interpretation, the significance of Mr. Dahabi.

14:28:05 10 MR. HARTMAN: I think that was Marwan --

14:28:06 11 THE COURT: I recall Mr. Dahabi testified.
14:28:13 12 He threw away those papers in light of the FBI because
14:28:15 13 he was frightened about what Griffin was talking about
14:28:18 14 rather than what your client might have been talking
14:28:20 15 about.

14:28:22 16 MR. HARTMAN: Correct.

14:28:30 17 THE COURT: But quite candidly, I think
14:28:32 18 public deterrence is among the factors. You'll go
14:28:39 19 through them again, but that's the one that's foremost
14:28:42 20 in my mind in trying to fashion a sentence sufficient
14:28:44 21 but not greater than necessary to accomplish that
14:28:48 22 objective.

14:28:50 23 MR. HARTMAN: And what we're deterring --

14:28:52 24 THE COURT: It's not life imprisonment.
14:28:54 25 And I'm not contemplating 20 years. Okay. I'll hear

14:28:59 1 from Mr. Getz. And I haven't made my mind up. But I
14:29:04 2 just want you to know, all as I'm saying in 30 seconds,
14:29:11 3 there are some things you don't have to worry about.
14:29:14 4 Incapacitation and private deterrence, I know what
14:29:20 5 you're going to say, and I agree. I do agree. Mr.
14:29:27 6 Getz may persuade me otherwise, or seek to. And if his
14:29:31 7 arguments cause me to think again, I'll let you know.
14:29:35 8 I'll say, Mr. Hartman, what about this or that?

14:29:42 9 MR. HARTMAN: So I could have slept last
14:29:44 10 night?

14:29:49 11 Then I want to talk about recruitment if
14:29:51 12 it's okay with you.

14:29:54 13 THE COURT: Under the seriousness of the
14:29:56 14 offense, as I see it listed in the statute, and respect
14:30:00 15 for the law, I think that's an important consideration.
14:30:05 16 And I really do think the issue of public deterrence.
14:30:14 17 Mr. Sofer said, I think sending a message -- I think,
14:30:21 18 quote, "sending a message" ultimately may be the most
14:30:26 19 useful thing a Judge does when he or she sentences
14:30:31 20 somebody because it speaks to the public. What I'm
14:30:48 21 trying to say, to some extent that's the job that a
14:30:51 22 Judge does, by holding somebody out, saying: Do this,
14:30:57 23 and that's what happens.

14:30:59 24 MR. HARTMAN: But send the message --

14:31:03 25 THE COURT: I'm sorry.

14:31:05 1 But particularly in this area. I do think,
14:31:08 2 and I'm not affected by the label. But I'm concerned
14:31:15 3 about the prospect of confronting this country in
14:31:20 4 general and how we as a society reduce the risk to
14:31:28 5 ourselves and even the risk elsewhere. And I think
14:31:37 6 quite candidly a severe punishment, even though these
14:31:43 7 three people simply didn't get very far along, and
14:31:48 8 simply never were going to get any further --

14:31:52 9 MR. HARTMAN: By choice with him.

14:31:53 10 THE COURT: Pardon?

14:31:54 11 MR. HARTMAN: By choice.

14:31:55 12 THE COURT: And that's a fair argument to
14:31:57 13 make. I think you're making it well, Look, Judge, for
14:32:01 14 ten months they got nothing except that phone call
14:32:08 15 chart. Those phone calls at least between phone
14:32:11 16 numbers, right?

14:32:14 17 MR. HARTMAN: Yeah, there are some phone
14:32:15 18 calls.

14:32:16 19 THE COURT: I think the answer to that is,
14:32:18 20 okay, they're there. We don't know who was speaking; we
14:32:22 21 don't know what was said. So you're saying, Judge, to
14:32:29 22 the extent there may have been some contact, you can't
14:32:33 23 give it a whole lot of weight. It isn't fair. You're
14:32:38 24 considering conduct that simply -- it's at least a great
14:32:43 25 likelihood it's not relevant, as it would be relevant

14:32:47 1 conduct as that term is used in the guidelines.

14:32:49 2 MR. HARTMAN: Yeah. It's conduct. You're
14:32:51 3 also sending the message that you get punished for what
14:32:54 4 you do. On the spectrum of these types of cases, you
14:33:00 5 have people who get punished for what they did. You
14:33:07 6 know, it's after the fact. There was some kind of
14:33:10 7 attack or something.

14:33:11 8 THE COURT: Putting what they think to be a
14:33:15 9 bomb in the trunk and getting in the car.

14:33:18 10 MR. HARTMAN: Moussaoui, the 20th hijacker.

14:33:22 11 THE COURT: The millennium bomber.

14:33:24 12 MR. HARTMAN: Exactly. You also have
14:33:26 13 people who get caught in the end. And the message to
14:33:29 14 those people is unequivocal: You get locked up for
14:33:34 15 life. Period. Then you have people who are preparing
14:33:42 16 for whatever act it is they're doing.

14:33:47 17 THE COURT: Then you would say, assume the
14:33:50 18 next level down, meaning another level down is people
14:33:53 19 are talking about preparing for the act?

14:33:56 20 MR. HARTMAN: That's down three or four
14:33:58 21 levels, people talking about the act. They're not
14:34:00 22 talking about the preparation. They haven't chosen
14:34:03 23 something to do. When Griffin said, Marwan, maybe you
14:34:07 24 want to go to Philistine, that's the only indication
14:34:12 25 that there was something to do. Even in this whole

14:34:15 1 conspiracy, there was never a plan. There was never an
14:34:20 2 objective. There was -- well, there was a loose
14:34:24 3 objective.

14:34:25 4 THE COURT: But never a timetable?

14:34:28 5 MR. HARTMAN: Never a timetable.

14:34:29 6 THE COURT: Never a destination?

14:34:30 7 MR. HARTMAN: Or a target.

14:34:31 8 THE COURT: There was never a method.

14:34:34 9 MR. HARTMAN: Right. It's at the bottom of
14:34:37 10 that spectrum. And the message should also be that you
14:34:40 11 do get a fair shake here. And you get punished for
14:34:43 12 your conduct, like the statute says.

14:34:55 13 Khaleel and Zubair Ahmed actually were way
14:35:04 14 up on that spectrum because --

14:35:10 15 THE COURT: Eight or nine year -- they got
14:35:15 16 an eight or nine year binding sentence.

14:35:18 17 MS. SIZEMORE: They have not yet been
14:35:20 18 sentenced.

14:35:21 19 THE COURT: But they're binding plea
14:35:23 20 agreements.

14:35:23 21 MS. SIZEMORE: Correct.

14:35:24 22 THE COURT: So I have no discretion. Eight
14:35:27 23 or nine years.

14:35:28 24 MR. HARTMAN: I think nine to 11.

14:35:34 25 MR. HERDMAN: Your Honor, they're tied to a

14:35:35 1 specific guideline range. It would be a criminal
14:35:38 2 history category VI. I believe -- criminal history
14:35:54 3 category VI, Khaleel Ahmed would be at an offense level
14:35:58 4 23. Zubair Ahmed would be at an offense level 24.

14:36:09 5 THE COURT: So the guideline range?

14:36:16 6 MR. HERDMAN: It's 92 to 115 months at the
14:36:20 7 offense level 23, and 100 to 125 months at the offense
14:36:27 8 level 24 for Zubair.

14:36:30 9 THE COURT: So around ten years.

14:36:34 10 MR. HERDMAN: I think nine to ten.

14:36:35 11 THE COURT: That's what I thought.

14:36:37 12 MR. HARTMAN: What El-Hindi did was nowhere
14:36:39 13 close to what those guys did.

14:36:43 14 THE COURT: What does the record tell me
14:36:45 15 that they did?

14:36:47 16 MR. HARTMAN: They got on an airplane and
14:36:52 17 they flew halfway across the world to meet somebody who
14:36:58 18 was going to get them into a training camp or Iraq, one
14:37:03 19 or the other. That's getting really close to the top
14:37:09 20 of that spectrum we were talking about. And he didn't
14:37:15 21 corrupt them. He didn't make them terrorists or make
14:37:19 22 them want to be terrorists. That was before he ever
14:37:23 23 met them. The lengths they went to before they ever
14:37:28 24 came in contact with Marwan El-Hindi, they had this
14:37:31 25 interest in guns. They had all this computer material.

14:37:36 1 They had this firearms license.

14:37:38 2 THE COURT: At least one of them had been in
14:37:40 3 contact with somebody.

14:37:42 4 MR. HARTMAN: With Haris in Atlanta. And I
14:37:44 5 think there was some indication of even Irhabi-007, that
14:37:50 6 Zubair was in contact with them. I mean this was that
14:37:53 7 close to the real thing. If that contact in Cairo had
14:37:58 8 turned out -- I don't know what happened there, so I
14:38:01 9 can't say, but it was close to the real thing. And
14:38:08 10 they got the benefit of a plea agreement because of the
14:38:12 11 contact with that other person probably. You know what
14:38:15 12 it reminds me of, the government asking for a life
14:38:19 13 sentence for El-Hindi? It reminds me of the old drug
14:38:22 14 cases where the girlfriend who was in the car twice when
14:38:25 15 the guy dropped off the drugs gets convicted of the
14:38:28 16 conspiracy, and she's responsible for all the drugs in
14:38:31 17 the whole conspiracy, but the guy who was the dealer can
14:38:34 18 give up people above him, so he gets a plea deal, and he
14:38:39 19 walks or gets a light sentence, and she goes to prison
14:38:42 20 for 20 years. She wasn't really a drug dealer.
14:38:47 21 That's what this reminds me of. It's fundamentally
14:38:52 22 unfair, that situation. But Marwan didn't corrupt
14:38:56 23 these two young men.

14:39:03 24 THE COURT: They weren't putty; they were
14:39:07 25 already fully formed.

14:39:08 1 MR. HARTMAN: They took the opportunity.
14:39:09 2 They tried to go be terrorists. And the father called
14:39:13 3 Marwan for the purpose of trying to go get them and
14:39:16 4 bring them back. He called and he said, Help. That's
14:39:19 5 why this --

14:39:22 6 THE COURT: But we already -- it may be
14:39:25 7 true. But in terms of looking at his conduct here,
14:39:29 8 knowing that, and then instead of acting in a way that
14:39:40 9 he had when he went to Cairo and pulled them back from
14:39:45 10 the edge of that, kept them from taking those next
14:39:53 11 steps, he behaved differently. They wound up coming,
14:39:58 12 but he knew -- whether he knew --

14:40:04 13 MR. HARTMAN: That a -- sorry.

14:40:07 14 THE COURT: -- Griffin was going to be there
14:40:09 15 or not.

14:40:09 16 MR. HARTMAN: He didn't know Griffin was
14:40:11 17 going to be there. I think that's an important factor
14:40:13 18 because he never met up with Griffin again.

14:40:16 19 THE COURT: I'm sorry, but this is very
14:40:18 20 troublesome because he was there, and if memory serves
14:40:24 21 on that video camera that Griffin had in his briefcase
14:40:28 22 or whatever, if I recall correctly, one way the Ahmeds
14:40:35 23 are conversing with Griffin and Mr. El-Hindi would
14:40:40 24 appear to be within earshot, or do I misrecollect?

14:40:45 25 MR. HARTMAN: No, you're correct. Both

14:40:46 1 Ahmeds are there. And they are clearly talking about
14:40:50 2 Griffin training them, teaching them to shoot, run with
14:40:54 3 a .50 caliber.

14:40:55 4 THE COURT: My problem is, Mr. El-Hindi made
14:40:59 5 a choice. He may have made it implicitly. And if
14:41:05 6 memory serves, I don't think he, quote, joined in the
14:41:10 7 conversation.

14:41:11 8 MR. HARTMAN: Not much. He talked about
14:41:13 9 training for fitness at the end. They were talking
14:41:16 10 about getting in shape.

14:41:18 11 THE COURT: But it was a different "he" than
14:41:23 12 the "he" who was in Cairo. The "he" who went to Cairo
14:41:33 13 pulled them back. He didn't pull them back. He sat
14:41:38 14 idly by in Cleveland, and they are talking in pretty
14:41:42 15 unmistakable terms about what they want and how they're
14:41:45 16 going to get it from Griffin. And that's troublesome.

14:41:52 17 MR. HARTMAN: There is no question; you're
14:41:54 18 exactly right. But really, Judge, let's look at what
14:41:57 19 happens after that.

14:41:59 20 THE COURT: Because once again, I think part
14:42:01 21 of the message that ought to be communicated is: Watch
14:42:06 22 out. This is a danger zone. It's like a minefield.
14:42:11 23 You don't know where the mines are. There may be one;
14:42:14 24 there may be 100. The path may be narrow or wide.
14:42:18 25 But in this area, I think part of the function of the

14:42:23 1 Court in a case like this is to say to people like Mr.
14:42:26 2 El-Hindi, particularly after the laudable thing that he
14:42:31 3 did, to sit there and to hear this in his own
14:42:39 4 self-interest or anyone else similarly situated to say:
14:42:42 5 Time out; wait a minute; forget about it; that's not why
14:42:46 6 I brought you here. We've got this other conference
14:42:48 7 going on. Stay away from Griffin. He is nothing but
14:42:51 8 bad news. What he's talking about, what he's already
14:42:57 9 talked about can get you in trouble. Again, I keep
14:43:04 10 coming back to this. I think an appropriate function
14:43:09 11 in a case such as this is to raise that skull and
14:43:14 12 crossbones, danger, minefield, danger, don't go there,
14:43:18 13 turn around.

14:43:18 14 MR. HARTMAN: Okay. There's another way to
14:43:20 15 do the same thing. There's another way to do that,
14:43:27 16 which is that you tell him, okay, yeah, I'll get you
14:43:31 17 together; we'll do it. But then you never do. And
14:43:36 18 the comments after that. And they don't even allege
14:43:45 19 Griffin and the Ahmeds got together after Cleveland.
14:43:48 20 But the comments after that, you hear El-Hindi saying,
14:43:51 21 Maybe we'll get together, when he's talking to Griffin,
14:43:54 22 or when he's talking to the Ahmeds. But you also hear
14:43:57 23 him say completely contradictory things to Griffin about
14:44:05 24 those same guys. You hear him say they're doing well.
14:44:10 25 They're back in school. You hear him tell Griffin,

14:44:13 1 Tell them you'll train them, but not for jihad. I
14:44:16 2 mean, he talks out of both sides of his face.

14:44:27 3 That's not relegated to just this specific
14:44:30 4 issue either. I mean, for the government, the
14:44:33 5 government called him a thief and a con man. But then
14:44:36 6 they turn around and said that he was a great leader in
14:44:39 7 the community. Judge, no, that's not the reality of
14:44:46 8 the situation. I think in large part it's a cultural
14:44:50 9 thing, but I think the way that the government pegs him
14:44:53 10 as a con man and they talk about he's a small
14:44:56 11 nickel-and-dime hustler, well, I mean, it's a question
14:45:02 12 of perspective. But you think of an entrepreneur, a
14:45:08 13 businessman on the one hand, a nickel-and-dime hustler
14:45:11 14 on the other. Depends on your definition. But that's
14:45:14 15 him. And everybody knows that. He wasn't the leader.
14:45:19 16 And he didn't have to lead these kids into doing
14:45:21 17 anything either. We have to remember that. They were
14:45:24 18 already there. They were already on the plane. He
14:45:28 19 didn't have to make them do anything. So afterwards,
14:45:32 20 not only doesn't he get them together with Griffin, but
14:45:35 21 you can't tell from his words what he wants to do. The
14:45:39 22 government points out, rightly, when he makes comments
14:45:44 23 that make it sound like he's going to get them together
14:45:47 24 again. And we pointed out when he makes comments that
14:45:51 25 make it sound like he's not going to get them together

14:45:56 1 again.

14:45:57 2 THE COURT: What's the most significant
14:46:01 3 aspect of there's no "there" there? There was no
14:46:06 4 further -- there's no evidence of anything untoward
14:46:10 5 between him and the Ahmeds there, correct?

14:46:14 6 MR. HARTMAN: Absolutely.

14:46:15 7 THE COURT: Okay. And I understand that.

14:46:18 8 MR. HARTMAN: Absolutely.

14:46:27 9 THE COURT: The fact they may have been here
14:46:31 10 four times, I simply can't speculate one way or the
14:46:34 11 other. For all we know, he may have been discouraging
14:46:38 12 them. Look, guys, for all we know he may be saying,
14:46:42 13 We'll get to it. Either way, it's speculation, and I
14:46:48 14 can't say.

14:46:51 15 MR. HARTMAN: That's fair. But the record
14:46:53 16 does reflect no meeting. And we can leave it at that.

14:47:05 17 Now, Griffin pushed El-Hindi this whole
14:47:07 18 time, Judge. This is another important factor in why
14:47:12 19 this thing seemed so big. And Griffin, the recordings,
14:47:21 20 is pushing El-Hindi constantly to get him together with
14:47:24 21 the Ahmeds. And that doesn't happen. So the problem
14:47:30 22 for El-Hindi is that he stays around. The government
14:47:38 23 said -- Mr. Sofer pointed out over and over again in his
14:47:42 24 closing argument, He didn't run away. He didn't do
14:47:45 25 anything, but he didn't run away. Well, eventually I

14:47:51 1 think Griffin probably understood that nothing was going
14:47:54 2 to happen with the Ahmeds, but by this time Amawi's on
14:47:58 3 the scene, and we have that interaction.

14:48:04 4 This is again a perfect example of the fact
14:48:09 5 that Griffin is pushing this thing. Griffin is coming
14:48:12 6 after this. It's not El-Hindi. Griffin told the FBI,
14:48:16 7 you know, on multiple occasions, you know, he was
14:48:20 8 creating the cell. He didn't get asked to do that by
14:48:23 9 Marwan El-Hindi. When he met Amawi on February 2, it
14:48:28 10 was because Griffin brought him over to Amawi's house.
14:48:31 11 He didn't know who he was. And they end up watching
14:48:35 12 the videos. And the videos are disturbing to us. But
14:48:40 13 Griffin made that happen. On the 16th when they come
14:48:46 14 to El-Hindi's house, the planning meeting or however it
14:48:53 15 was described, El-Hindi didn't even know that was going
14:48:56 16 to happen. He thought Amawi was coming over to fix his
14:49:00 17 computer. He didn't even know Mazloun was coming.

14:49:10 18 When they get there, the government shows
14:49:14 19 you Sentencing Exhibit 6, which is the picture of the
14:49:22 20 child.

14:49:22 21 THE COURT: I remember the video.

14:49:24 22 MR. HARTMAN: You remember the video.

14:49:25 23 Okay. Well, then you heard what the government said.
14:49:38 24 He was sitting, hearing, listening to everything going
14:49:42 25 on. That's how Mr. El-Hindi -- that's how they

14:49:45 1 characterized Mr. El-Hindi in this meeting.

14:49:47 2 If you saw that video, you remember that's
14:49:48 3 not true because you remember the empty couch. He left
14:49:52 4 several times, Judge. El-Hindi was active, but it's
14:49:55 5 because he was serving food, and at one point playing
14:49:58 6 with his kids. That video is actually a good corollary
14:50:02 7 for this whole case because El-Hindi's active, but he's
14:50:08 8 not engaged with what's going on.

14:50:11 9 THE COURT: He's not proactive.

14:50:14 10 MR. HARTMAN: No, he's not proactive.

14:50:16 11 But again, he doesn't run away. And his
14:50:19 12 words come out of both sides of his mouth. And that's
14:50:24 13 clearly enough to get him convicted.

14:50:43 14 THE COURT: I think we want to encourage
14:50:45 15 people in that situation to run away.

14:50:47 16 MR. HARTMAN: It's hard to do.

14:50:49 17 THE COURT: I understand.

14:50:50 18 MR. HARTMAN: It's even harder for
14:50:52 19 someone --

14:50:54 20 THE COURT: I'm sorry. Go ahead.

14:50:55 21 MR. HARTMAN: I'm sorry. It's even harder
14:50:57 22 for someone who's Arab.

14:50:59 23 THE COURT: Who's what?

14:51:01 24 MR. HARTMAN: An Arab. I'm reading the New
14:51:04 25 York Times this weekend, and there's a story about the

14:51:07 1 New York Times journalists, I don't know if you saw it,
14:51:10 2 who got kidnapped. And there's a reference in here to
14:51:15 3 having someone in your house and being a host. It's a
14:51:19 4 cultural thing we don't understand. He's not going to
14:51:23 5 throw them out of the house. He's just not.

14:51:29 6 I understand that the Court wants to send a
14:51:32 7 message to people that you should have thrown him out of
14:51:35 8 the house. But if you don't do anything, the layman is
14:51:44 9 going to think as long as you don't do anything, you
14:51:48 10 don't get in trouble. I'm not doing anything. And
14:51:51 11 most laymen are going to think about that. But again,
14:51:56 12 you run into conspiracy law, and there you go. You
14:52:00 13 know, even if I said -- showed an interest, even if I
14:52:05 14 said things that made it sound like I'm interested, as
14:52:09 15 long as I don't do anything, if I don't cross that line,
14:52:11 16 I don't get in trouble. So I didn't really have to
14:52:14 17 throw them out of the house. I can just sit here and
14:52:17 18 listen. The problem for El-Hindi is that afterwards he
14:52:19 19 goes and watches those videos -- in and of itself not a
14:52:23 20 crime. But again, it makes him look interested. But
14:52:27 21 if we're going to sentence him on his conduct, El-Hindi
14:52:37 22 doesn't take the book that Griffin offers. El-Hindi
14:52:42 23 doesn't take the book that Griffin offers when he's at
14:52:45 24 this meeting. He doesn't respond when Griffin out of
14:52:48 25 the blue for the very first time when he says, Marwan,

14:52:51 1 maybe you want to go to Philistine, he doesn't show any
14:52:53 2 response to that. He didn't engage in that portion of
14:52:58 3 the conversation where Griffin was talking about his
14:53:02 4 plan.

14:53:03 5 Now, the government will point out,
14:53:05 6 correctly so, that he did engage in a conversation with
14:53:08 7 Amawi and Mazloun where they're talking about conflict
14:53:13 8 in the Middle East and who needs what and what people
14:53:18 9 are trying to do. Well, you know what, again, as long
14:53:22 10 as they don't cross that line, I'm not doing anything
14:53:26 11 wrong, and I can't get in trouble. I'm not saying that
14:53:29 12 saying the Mujahidin needs manpower is akin to saying
14:53:32 13 the Red Sox need pitchers; I'm not going to say that.
14:53:36 14 But on some level --

14:53:40 15 THE COURT: Actually, it's hitters. But go
14:53:43 16 ahead.

14:53:43 17 MR. HARTMAN: It's usually pitchers.

14:53:45 18 THE COURT: I understand what you're saying.

14:53:49 19 MR. HARTMAN: And I don't mean to belittle
14:53:51 20 this. I really don't.

14:53:52 21 THE COURT: I know. Neither do I.

14:53:56 22 MR. HARTMAN: But if you're just talking
14:53:58 23 about it, and again, I think this might be in part a
14:54:01 24 cultural thing --

14:54:04 25 THE COURT: I understand exactly what you're

14:54:09 1 saying. I think there is a difference between, for
14:54:13 2 whatever reason, saying, I hope the insurgency prevails;
14:54:17 3 I hope they drive the Americans out of the Middle East
14:54:21 4 forever. Clearly a difference between that, protected
14:54:29 5 speech in this country, not popular, but so what; and
14:54:34 6 saying, you know, Maybe I'll go over there and help,
14:54:37 7 that's how strongly I feel about it. That's when you
14:54:40 8 begin to cross the line.

14:54:42 9 MR. HARTMAN: Right.

14:54:43 10 THE COURT: And listening to you reminds me
14:54:45 11 of something, when I was -- for three summers in college
14:54:52 12 I carried mail. I've never forgotten the first day on
14:54:56 13 the job. And the assistant postmaster got a group of
14:55:03 14 us substitutes, and he started talking about what we
14:55:06 15 shouldn't do with the mail. You shouldn't be reading
14:55:09 16 the Playboys; you shouldn't be reading post cards; you
14:55:13 17 shouldn't look at catalogs. Somebody has paid us to
14:55:17 18 carry that. Even if it's junk to us, it's not to the
14:55:21 19 people that paid for it. You have to act as if there's
14:55:25 20 a postal inspector behind every mailbox looking at you.
14:55:29 21 And in all candor, I think that's what the government
14:55:31 22 wants to accomplish through prosecutions such as this.
14:55:34 23 It's perfectly all right. We're not going to punish you
14:55:38 24 for whatever your views are, whether you support what
14:55:43 25 the government does or you do not support. Whatever

14:55:46 1 you say, for or against. But when somebody shows up at
14:55:54 2 your doorstep saying, Let's do jihad, let's do something
14:55:58 3 about this, let's get training, let's get about the
14:56:02 4 business of it; just like the young letter carrier that
14:56:08 5 summer that got asked if anybody was talking to you and
14:56:14 6 trying to reduce you to flypaper, and -- I think that's
14:56:24 7 why the government says this prosecution is so
14:56:29 8 important, because given the ultimate consequences, and
14:56:33 9 given the clear difficulty of detecting these kinds of
14:56:37 10 conspiracies, as I understand, I've seen in the paper
14:56:47 11 the nature of the cases that come to public attention,
14:56:51 12 not only drug cases, they catch somebody dealing, they
14:56:58 13 have a hook, they go from there, they know what's going
14:57:04 14 on. Here they don't because of the secretive nature of
14:57:12 15 this kind of thing. You don't have that sort of be
14:57:14 16 public activity, that activity that potentially could
14:57:17 17 come into the view of law enforcement agents.

14:57:22 18 MR. HARTMAN: But by the same token, here
14:57:24 19 they know because it was their guy who went looking for
14:57:28 20 him.

14:57:30 21 THE COURT: That's exactly my point. Just
14:57:33 22 like other people who say, oops, wait a minute, back
14:57:38 23 off, wait a minute. I want nothing to do with Mr.
14:57:43 24 Griffin and his -- I think there was some reference he
14:57:47 25 took lots of other people shooting out there. For

14:57:50 1 whatever reason, they weren't joined in this indictment.
14:57:55 2 They never reindicted or anything. A fair inference,
14:58:00 3 assuming that Mr. Griffin took them out to Clelands for
14:58:03 4 the same reason he took these guys out, they made a
14:58:07 5 decision and said, oops, no thanks.

14:58:11 6 MR. HARTMAN: But a lot of this, what
14:58:16 7 happened with El-Hindi didn't start until Griffin came
14:58:18 8 on the scene. So --

14:58:23 9 THE COURT: I don't know. Assuming I
14:58:27 10 credit or I agree with the connection to be made with
14:58:30 11 the Eckhlaas and the IAI e-mail, the postings on the
14:58:39 12 Ekhlaas website.

14:58:40 13 MR. HARTMAN: That was after Griffin was on
14:58:42 14 the scene. Griffin had been working on him for four
14:58:44 15 years.

14:58:44 16 THE COURT: Yeah, but Griffin didn't say,
14:58:47 17 Hey, here's how you get yourself to get all this cool
14:58:50 18 kind of stuff.

14:58:51 19 MR. HARTMAN: No, but he did say back in
14:58:56 20 2003, early 2003, I want to get militant. I want to be
14:59:01 21 over there doing a training program. He started
14:59:03 22 talking like that. And he spends that much time
14:59:08 23 talking like that to a person. He's creating his cell.
14:59:16 24 But is he creating not just the cell, but he is creating
14:59:28 25 something in that defendant. Is he incubating something

14:59:33 1 that otherwise wouldn't have come out? I don't know.

14:59:38 2 But the way you're talking about it, that's a fuzzy,

14:59:45 3 fuzzy line. And let's face it --

14:59:49 4 THE COURT: I agree with you. Okay. But

14:59:52 5 it's like the sign with the message that the government

14:59:56 6 wants communicated is: Err on the side of caution if

15:00:02 7 someone comes to you under the banner of jihad and

15:00:07 8 starts talking about going overseas and getting ready to

15:00:19 9 do it. The government wants to tell, as loudly and as

15:00:23 10 extensively at it can, at that point you have a choice

15:00:26 11 to make because unless you back off, which from the

15:00:31 12 government's standpoint is the most effective way of

15:00:35 13 trying to keep people from progressing any further --

15:00:39 14 it's almost an inoculation.

15:00:45 15 MR. HARTMAN: That's on the edge of being

15:00:47 16 pretty scary. Let's face it. This guy wasn't watched

15:00:53 17 very closely. I mean, he was deciding what to do and

15:00:58 18 when to do it. He was lying to his own handlers.

15:01:02 19 THE COURT: I'm well aware of that. If

15:01:05 20 Griffin wasn't a government employee, he's the hub of

15:01:12 21 what went on. I understand that fully. And I'm only

15:01:16 22 talking in terms of the message that I believe and

15:01:20 23 understand the government wants this community to hear.

15:01:25 24 And the reasons that it does so is given the nature of

15:01:27 25 the potential consequences and the difficulties in

15:01:30 1 detecting these kinds of conspiracies. A drug
15:01:33 2 conspiracy, people are out there on the streets. It's
15:01:40 3 a much -- the conduct at least to some extent is on the
15:01:48 4 street corner. It's visible. That's not the case
15:01:51 5 here. I think that's what the government is saying.
15:01:59 6 If not, they can tell me.

15:02:01 7 MR. HARTMAN: I understand that. And I
15:02:02 8 understand why the government would want to say that.
15:02:05 9 But --

15:02:07 10 THE COURT: And I don't think in doing so is
15:02:12 11 having any effect. Mr. El-Hindi's sister said she's
15:02:15 12 scared to say anything. Well, candidly, she shouldn't.
15:02:20 13 I understand what she means.

15:02:22 14 MR. HARTMAN: A lot of people are.

15:02:23 15 THE COURT: I understand that.

15:02:30 16 MR. HARTMAN: The message that you're
15:02:31 17 sending is important; I'll give you that. But you
15:02:36 18 can't forget that the purpose of this person and the
15:02:43 19 things that he said about his intent to go make this
15:02:47 20 happen, it definitely -- it tips a certain scale
15:02:56 21 somewhat when you're talking about his conduct because
15:03:01 22 of the way Griffin did it. And you've got to remember,
15:03:06 23 what he's telling the FBI, you know, when Griffin and --
15:03:11 24 or when El-Hindi and Amawi have a falling out, and
15:03:15 25 Griffin tells the FBI, don't worry, I'll smooth it all

15:03:19 1 over, we'll get them to go to train.

15:03:21 2 THE COURT: Put Humpty Dumpty back together.

15:03:25 3 MR. HARTMAN: Yeah. I'll go get these

15:03:27 4 guys, I'll put them together. I'll talk them up.

15:03:30 5 I'll get them round up; I'll see if they bite. Well,

15:03:34 6 where's that line that El-Hindi has to cross in order to

15:03:37 7 bite? Amawi, I think by what --

15:03:42 8 THE COURT: The jury found he crossed the

15:03:45 9 line.

15:03:45 10 MR. HARTMAN: No, the jury found a

15:03:46 11 conspiracy, Judge. The words. 3553 is talking about

15:03:51 12 the conduct. We've been talking about the conduct.

15:04:08 13 Marwan's 46. History and characteristics

15:04:12 14 of the defendant. Just briefly -- you're going to hear

15:04:16 15 from him shortly. He's been in the U.S. for 25 years

15:04:22 16 with no record of violence or aggression or radical

15:04:26 17 behavior.

15:04:28 18 THE COURT: Until his concurrent fraud or

15:04:36 19 the fraud conviction.

15:04:38 20 MR. HARTMAN: Right. Right. You're

15:04:40 21 right. There wasn't any. And there wasn't any of

15:04:44 22 those negative tendencies that we talked about until --

15:04:47 23 well, until Griffin comes along.

15:04:54 24 I think Ms. Sizemore would tell you he's

15:04:56 25 been a model prisoner up at Milan. In fact, he wanted

15:05:02 1 to see if we could bring down some of the guards to
15:05:05 2 testify at his sentencing about the way he's been and
15:05:08 3 they were willing to do it. But the BOP doesn't allow
15:05:11 4 that kind of thing.

15:05:17 5 The government's approach is sort of
15:05:24 6 one-size-fits-all. Although they're going to say it's
15:05:27 7 not, it is. And it doesn't give proper consideration
15:05:38 8 to the act or to the actor. And Marwan was never like
15:05:45 9 this. He was a simple guy doing the best he could with
15:05:52 10 what he had. All these little things that we call
15:05:57 11 scams or hustling, conniving, he's trying to eek by.
15:06:06 12 That's what he's been doing in trying to raise his
15:06:09 13 family. And he's going to tell you, his family is the
15:06:12 14 most important thing in his life. That's part of the
15:06:15 15 record when he told Griffin, jihad to this man is
15:06:18 16 raising his children. That's what he gets fired up
15:06:22 17 about the most. That's what he told Griffin. That's
15:06:26 18 jihad.

15:06:37 19 I think we've -- does Your Honor think the
15:06:42 20 cases that the government pointed out are really
15:06:44 21 analogous?

15:06:47 22 THE COURT: No, I think we've all -- the
15:06:51 23 common understanding is this is sui generis, unique.
15:07:06 24 So far anyway. Sort of contrary to what I'm supposed to
15:07:16 25 do, look up and find other cases, there being no other

15:07:20 1 cases, I don't have, as it were, those channel markers,
15:07:25 2 those red and green lights.

15:07:31 3 MR. HARTMAN: I certainly don't think the
15:07:33 4 government can act as those red and green lights. The
15:07:37 5 Fort Dix case --

15:07:38 6 THE COURT: And in all candor, trying to
15:07:41 7 work within -- I'm trying to work within the three
15:07:43 8 individuals.

15:07:49 9 MR. HARTMAN: I think for this one, if you
15:07:50 10 really look within the actor and the act, I think you're
15:07:58 11 going to find that the message that you need to send is
15:08:04 12 the only issue really. But I would --

15:08:08 13 THE COURT: I agree with you. That's what
15:08:10 14 I was trying to say earlier. I think your position is,
15:08:18 15 Judge, number one, that may not be what the
15:08:23 16 government -- maybe not their point, maybe I
15:08:26 17 misinterpreted the motivation and the vigor with which
15:08:32 18 they have prosecuted this particular case when, quote,
15:08:35 19 nothing has happened, and applied the resources that
15:08:40 20 have been borne into this case, both to pay you and the
15:08:46 21 other lawyers, the government lawyers, investigators,
15:08:50 22 two-plus years, \$340,000 without getting a tax return
15:08:59 23 filed is candidly a very troubling circumstance. But
15:09:02 24 that's neither here nor there.

15:09:04 25 MR. HARTMAN: I agree.

15:09:10 1 THE COURT: But with regard to Mr. El-Hindi,
15:09:13 2 the issue is what sentence is sufficient but not greater
15:09:18 3 than necessary to communicate an appropriate message
15:09:22 4 about the conduct that he engaged in along with the
15:09:26 5 other four, if you add them all up? Whether the Ahmeds
15:09:34 6 still are part of this indictment or not, nonetheless, I
15:09:38 7 think that's the only question, the only substantial
15:09:43 8 question. I'll consider all the factors. I like to
15:09:46 9 preserve the record for myself as well. But I'll
15:09:50 10 consider those --

15:09:51 11 MR. HARTMAN: I understand. But I think
15:09:53 12 the message you're talking about sending in this
15:09:55 13 instance is when -- run away.

15:10:03 14 THE COURT: This is not the person through
15:10:05 15 whom to make that example.

15:10:08 16 MR. HARTMAN: Clearly. Because the example
15:10:13 17 you're making with him is run away. That's what the
15:10:17 18 government -- that was the mantra in closing. The
15:10:21 19 message you're sending is, Hey, folks, run away from a
15:10:24 20 guy like this, even though the government put him there.

15:10:28 21 Can I have a minute to consult?

15:10:30 22 THE COURT: Of course.

15:10:32 23 MR. HARTMAN: Thanks.

15:11:53 24 (Discussion had off the record.)

15:12:25 25 MR. HARTMAN: I am finished. We will ask

15:12:27 1 the Court to hear from our client, but I'm wondering if
15:12:32 2 we can take a quick break.

15:12:34 3 THE COURT: Sure. When it rains, it pours.
15:12:37 4 Amy tells me I have a TRO I have to tend to.

15:12:41 5 MR. HARTMAN: Thank you very much.

15:12:42 6 THE COURT: I would assume not later than
15:12:46 7 3:30 we'll get underway. How long do you expect Mr.
15:12:50 8 El-Hindi to talk?

15:12:52 9 MR. HARTMAN: I don't think he'll go longer
15:12:53 10 than ten minutes.

15:12:54 11 THE COURT: Mr. El-Hindi, you'll have the
15:12:56 12 opportunity shortly to speak on your own behalf. This
15:13:04 13 is often, if not always, for me anyway, and for you and
15:13:09 14 the people in your situation, the most important part of
15:13:12 15 this proceeding. It's your opportunity to speak to me
15:13:14 16 directly and plainly on your own behalf and to say what
15:13:20 17 you want to say. There are no time limits, and I ask
15:13:25 18 only in terms of my own schedule.

15:13:28 19 MR. HARTMAN: Judge, I do need to move this
15:13:30 20 tape as Sentencing Exhibit 3.

15:13:40 21 THE COURT: No objection, I assume?

15:13:42 22 MR. GETZ: No objection.

15:13:44 23 MR. HARTMAN: Thank you.

15:13:52 24 THE COURT: Let's say 3:30.

15:56:26 25 (Recess taken.)

15:56:26 1 THE COURT: You may proceed.

15:56:31 2 MR. HARTMAN: Your Honor, at this time Mr.
15:56:33 3 El-Hindi is going to address the Court.

15:56:35 4 THE COURT: Okay.

15:56:43 5 * * *

15:56:43 6 THE DEFENDANT: By the name of God most
15:56:46 7 merciful, Allah, the Lord of the world, the garden of
15:56:54 8 the heavens, may peace be upon his companions of the
15:56:59 9 prophets. Prophet Mohammad, please be upon him and
15:57:03 10 whoever follow him.

15:57:07 11 To proceed first I would like to thank the
15:57:13 12 Court for the opportunity that they give us.

15:57:18 13 THE COURT: Actually, Mr. El-Hindi, you can
15:57:20 14 thank the founders of our republic. They inshrined
15:57:26 15 this opportunity in our Constitution, and you have the
15:57:28 16 absolute right. I'm not doing any favor; I'm simply
15:57:31 17 doing my job. I'll give you a chance, but it's an
15:57:36 18 important part of the job I have to do.

15:57:38 19 THE DEFENDANT: Thank you. I really
15:57:40 20 appreciate that. And I appreciate my attorneys who
15:57:44 21 fought so hard to bring justice, which is, I believe --
15:57:52 22 I don't believe has been served. However, I would like
15:57:55 23 to talk about myself before the case. And yes, indeed,
15:58:03 24 I want everybody to be Muslims. I would invite you,
15:58:07 25 invite the government, invite everybody to be good

15:58:10 1 Muslims and to follow because this is my duty. And I
15:58:18 2 am Muslim from Arab origin. Proud of being an
15:58:22 3 American, American citizen who has raised seven
15:58:27 4 children, seven American children. Their security is
15:58:32 5 everybody's security, every American's security. I
15:58:37 6 became American by choice. And I love this country
15:58:40 7 more than any country in the world. I spend most of my
15:58:44 8 life in this country. Its pains, my pains; its grief
15:58:51 9 is my griefs; it's enemies, my enemy. No matter what
15:58:57 10 the government paint me as a monster, a terrorist; I'm
15:59:03 11 not a terrorist. I'm a good citizen of this country.
15:59:08 12 I spent 25 years in this country. And I never hurt a
15:59:11 13 person. And I am proud to be American. The
15:59:23 14 government said at the beginning of the trial that I
15:59:28 15 should have ran away from Darren Griffin, not walked
15:59:34 16 away. Yes, I agree with you. I should have ran away
15:59:38 17 from Darren Griffin. However, our custom does not
15:59:43 18 permit us to do so.

15:59:44 19 THE COURT: I didn't hear what you just
15:59:46 20 said.

15:59:47 21 THE DEFENDANT: Our culture doesn't permit
15:59:49 22 us to do so. Our religion doesn't permit us to do so,
15:59:52 23 to push people out of our houses. He came to me, and
15:59:57 24 he wanted to learn Islam. The recording is very clear
16:00:05 25 when he asked me that he wanted to learn about jihad.

16:00:13 1 So I told him to have a seat, and I will explain to him
16:00:17 2 what jihad means. Jihad is a struggle. A struggle of
16:00:26 3 raising my children. And he seen how much that I have
16:00:30 4 struggled in raising my children. Being a single
16:00:35 5 parent between home schooling, between fixing their
16:00:40 6 breakfast, fixing their dinner, give them bath, going to
16:00:48 7 bed. I did not have any time for any of what the
16:00:52 8 government is allegation. If it wasn't for Darren
16:00:58 9 Griffin, none of this would happen. I wouldn't be in
16:01:01 10 this Court. The government made Darren Griffin as a
16:01:11 11 hero. He was not. He was not a hero at all. The
16:01:21 12 money, that's what attracted him to come and lie to you.
16:01:25 13 Whether you fabricated these things or him, I don't
16:01:29 14 know, but it was -- everything was fabricated.
16:01:34 15 Especially when I hear, and I have been hearing that I
16:01:38 16 approached him to condemn Israeli soldier or an official
16:01:44 17 of the United States. That was his approach. And I
16:01:48 18 told him, no, you cannot do that. And where am I going
16:01:52 19 to an Israeli soldier? I never. I never been in
16:02:01 20 Palestine to go attack American soldier or Israeli
16:02:07 21 soldier. If I disagree with the government, that does
16:02:11 22 not mean that I would like any harm to be in this
16:02:17 23 country. If I disagree with the government policy, I
16:02:22 24 honor the country rather than hate the country.
16:02:28 25 I should be the hero, Your Honor, of saving

16:02:35 1 lives rather than the accusation of killing lives. I
16:02:39 2 am the one whose saved the Ahmeds.

16:02:43 3 THE COURT: Saved?

16:02:44 4 THE DEFENDANT: I'm the one who saved the
16:02:46 5 Ahmeds, Zubair and Khaleel Ahmed, from either killing
16:02:50 6 themselves or killing American soldiers. I should be
16:02:54 7 the one who get the credit for that. I would have said
16:03:00 8 anything to bring them back safe to their family from
16:03:03 9 Egypt. They were in Egypt. If I had any intent, and I
16:03:10 10 mean intent in my mind, to recruit them for something
16:03:18 11 dangerous for them, there's a lot of opportunity for
16:03:21 12 them in Egypt or the Middle East.

16:03:25 13 THE COURT: I didn't understand.

16:03:27 14 THE DEFENDANT: If I had an intent to harm
16:03:29 15 them or harm anybody else, I would have left them in
16:03:37 16 Egypt where they have more opportunity to train and to
16:03:43 17 be with radical Muslims, as everybody says, which I
16:03:48 18 don't know anybody in Egypt radical or would offer
16:03:53 19 training. However, I saved them and brought them back
16:04:01 20 to their family.

16:04:03 21 Now, in the ICNA conference, the government
16:04:07 22 allege that I introduce them to Griffin. When Griffin
16:04:10 23 called me, I was on my way from Chicago to the ICNA
16:04:14 24 conference with Zubair and Khaleel Ahmed where we had a
16:04:21 25 partnership for the EMSS, and we had a contract. I had

16:04:24 1 a contract with Zubair Ahmed's father that he would --
16:04:31 2 would recruit students for us. And that's -- that was
16:04:38 3 the only reason why I took them to ICNA conference, not
16:04:42 4 to meet Darren Griffin, because I did not know that he
16:04:45 5 was going to be in the ICNA conference.

16:04:50 6 Your Honor, we spent almost three days or
16:04:54 7 four days and three nights in Cleveland; Cleveland,
16:05:00 8 Ohio. We did not meet with Darren Griffin behind any
16:05:06 9 closed doors. We did not have any meetings. We did
16:05:09 10 not have any plans to do anything where we had the
16:05:13 11 opportunity. I had the opportunity to take him to
16:05:16 12 Griffin where he spent three nights over there. Rather
16:05:20 13 than doing so, Griffin came down from his booth, which
16:05:27 14 was on the first floor, that he was representing
16:05:33 15 KindHearts, a charity organization, used to be from
16:05:37 16 Toledo. He came downstairs to our booth, the EMSS
16:05:43 17 booth, sneak in from the back. And I did not know that
16:05:53 18 he was talking to the Ahmeds about any training. I
16:05:57 19 was -- if you would watch the video carefully, Your
16:06:01 20 Honor, you will see my brother Yousef and I talking to
16:06:08 21 other people about the business, about the student
16:06:14 22 business. And when I came, when I realized that he was
16:06:17 23 there talking to them, I approached, and they totally
16:06:22 24 changed the conversation. Their conversation, the
16:06:27 25 first time I've seen it was in that video that the

16:06:31 1 government presented. I did not know what was going on
16:06:35 2 back then about the .50 calibers. I did -- I don't
16:06:39 3 even know the .50 caliber gun; until today I don't know
16:06:52 4 how it looks like. They start talking about
16:07:00 5 cardiovascular training.

16:07:02 6 THE COURT REPORTER: I didn't understand.

16:07:05 7 THE COURT: Cardiovascular training.

16:07:05 8 THE DEFENDANT: Yes, cardiovascular
16:07:09 9 training. I specifically told him, But not for jihad,
16:07:11 10 because I know their intent. Train them to protect
16:07:14 11 their family. Train them to protect mosque. And you
16:07:18 12 could hear on the video or on -- I'm sorry, in the
16:07:23 13 recording. Unfortunately, they recorded that it's most
16:07:32 14 important, we cannot find it. The government always --
16:07:37 15 well, either the government is hiding it or he hide it
16:07:41 16 from the government, I don't know. The whole
16:07:46 17 allegation is lies.

16:07:50 18 When I speak to my children, I always tell
16:07:55 19 them to tell the truth, even if it's going to harm them.
16:07:58 20 Tell the truth, because I'm in prison because of the
16:08:02 21 lying, because somebody came and lied to the government
16:08:11 22 for anger, I don't know what it is, for the money, their
16:08:14 23 position with the government; I really don't know.

16:08:20 24 I never went to fire training -- firearm
16:08:25 25 training, Cleland or anywhere where he gave me all the

16:08:29 1 opportunity. He was pushing me to go into the shooting
16:08:35 2 range. I never went with him. He always was telling
16:08:42 3 me to send e-mails. The only e-mail that I have sent
16:08:46 4 him, probably two or three e-mails, one of them an
16:08:50 5 e-mail that the government alleged is for training for
16:08:56 6 IED traps. That e-mail wasn't for IED to harm anybody.
16:09:04 7 That's to prevent. That's to teach you how to prevent
16:09:10 8 the IED. It's not to set off an IED.

16:09:19 9 And the other e-mail that I have sent to
16:09:22 10 Darren Griffin, which is -- that's why I kept him
16:09:29 11 around, my second wife needed support for immigration to
16:09:36 12 stay in the country, and he told me that he will do it
16:09:40 13 for me. That's why I send him the application via
16:09:44 14 e-mail. And he promised me that he was going to sign
16:09:50 15 for me.

16:09:55 16 At the time of my arrest, I hardly had any
16:09:58 17 conversation with Mazloum; Amawi, even. The only
16:10:08 18 conversation that I had with Amawi is when Darren
16:10:11 19 Griffin came to my house and he initiated the call to
16:10:15 20 Jordan. And he was asking for used laptops. And I
16:10:22 21 was assisting him in how to find used laptops and to get
16:10:26 22 it the cheapest way. The first time that I met Mr.
16:10:31 23 Amawi is when Darren Griffin and I were in Office Max
16:10:38 24 doing brochures, which is -- you could see it, the
16:10:46 25 brochures, and some CDs. Not the vest, as the

16:10:55 1 government claimed, but CDs for my business, which is to
16:11:00 2 recruit medical students, not to recruit terrorists,
16:11:04 3 because I am not terrorist, and I am against anybody
16:11:09 4 that support terrorists. At that time, of course,
16:11:15 5 there is no recording. That recording disappears.

16:11:19 6 The other recording you have typed is when
16:11:21 7 he takes it to Amawi's house, and he says, sorry that
16:11:27 8 restraint on you. And I wrote -- Brother El-Hindi to
16:11:34 9 introduce him to me. Prior to that, when we're in
16:11:37 10 Office Max, he told me, Didn't you have problems with
16:11:40 11 your computers? And I have brother that he could fix
16:11:44 12 your computers. Let me introduce you to him. He
16:11:47 13 lives close-by. That's in February 2 when he took me
16:11:53 14 to Amawi. Then Amawi -- then he asked Amawi, he is the
16:11:58 15 one who asked Amawi if the computer is on, if his
16:12:05 16 internet, if we can go in the room and see some of the
16:12:09 17 things that he had. We went in there.

16:12:12 18 Being an Arab, we always discuss politics.

16:12:16 19 THE COURT: I'm sorry?

16:12:17 20 THE DEFENDANT: Being an Arab, we always
16:12:19 21 discuss politics. We always are curious how things are.
16:12:27 22 Not for the intent to go and make it and destroy anybody
16:12:33 23 or to harm anybody. And I invited Amawi on that day to
16:12:42 24 come and fix my computers, not to come and have a
16:12:45 25 meeting. And in the beginning of the tape on February

16:12:52 1 16 of '05, you could hear Amawi, which is the government
16:12:57 2 have it "unintelligible," saying, Oh, I totally forgot,
16:13:04 3 didn't I come here to fix your computers? I forgot the
16:13:08 4 Windows for Arabic Windows. It was very clear that
16:13:12 5 dinner was for Amawi to come and fix my computers. He
16:13:17 6 didn't tell me that there was another person named
16:13:22 7 Wassim Mazloun was coming with them. They called me on
16:13:25 8 the way and they told me that there's another brother
16:13:28 9 who would like to come and have dinner. Being an Arab,
16:13:33 10 I don't care if he brings the whole Toledo with him
16:13:38 11 because this is our tradition, not to push anybody that
16:13:46 12 comes to your house. And you will hear -- you will
16:13:50 13 hear it on the video very clear when they came to
16:13:54 14 introduce Mr. Wassim Mazloun to me. And we were playing
16:14:00 15 with the kids. And all of a sudden, Darren Griffin
16:14:06 16 gets up and gives a speech. And you could see my
16:14:11 17 reaction in the video where I was shaking my head,
16:14:15 18 surprised at the speech. You could go back and look at
16:14:20 19 it, Your Honor. And even when he says: Maybe El-Hindi
16:14:28 20 would like to go to Palestine; I never told him that I
16:14:31 21 wanted to go to Palestine. I never had the intent to
16:14:34 22 go to Palestine. I never had the intent to go back
16:14:37 23 even to Jordan where my family -- where my loved ones
16:14:41 24 live. I want to stay in the United States and raise my
16:14:44 25 children in the United States.

16:14:47 1 I would tell Your Honor, if I could tell you
16:14:51 2 everything that happen to me for six years, I should
16:14:54 3 say, because today marks three years and eight months
16:15:00 4 that I've been in Milan Detention Center, and in the
16:15:07 5 beginning, for the first two and a half years, they put
16:15:14 6 me in segregation. They marked me as a dangerous.
16:15:21 7 They treated me so bad that I cannot even -- a human
16:15:28 8 being cannot even imagine. I wouldn't like to talk
16:15:33 9 about it because it really hurts me whenever I think
16:15:38 10 back of what happened to me over there in segregation.
16:15:41 11 But God, Allah, is watching over all of us.

16:15:46 12 The allegation of recruiting Zubair and
16:15:52 13 Khaleel was all false allegation. I had saved their
16:15:56 14 life and saved American lives. Even they call me a
16:16:04 15 hypocrite. Why? Because I brought them safe back to
16:16:08 16 their family, and I did not -- they did not accomplish
16:16:17 17 their goal.

16:16:20 18 Your Honor, when his father called me and
16:16:22 19 asked me to help, I sacrificed my family behind, and I
16:16:30 20 went to help. Before that I told his mom on the phone,
16:16:34 21 call the FBI. Call the FBI, Your Honor. If my intent
16:16:42 22 is to recruit terrorists, would I call the FBI? And in
16:16:48 23 the airport when we went to the airport I told her, Ms.
16:16:52 24 Ahmed, did you call the FBI? She said, Yes, and I made
16:16:55 25 a police report. I said, Thank you. Now we could

16:16:58 1 take the extra step because I didn't know what their
16:17:04 2 intent -- I didn't even know Zubair Ahmed or Khaleel
16:17:07 3 Ahmed. But in the airport during my time with his
16:17:15 4 father in the airport, going to Amsterdam, he explain to
16:17:19 5 me what kind of a son he is, that he stole the money
16:17:26 6 from the gas station, he took his cousin, and they're
16:17:29 7 going for jihad, and please locate him for me. I said,
16:17:34 8 Okay. Fine. If you would pay my expenses, and my
16:17:39 9 brother's expenses, I would love to go with you. I
16:17:43 10 would love to help you.

16:17:45 11 We arrive in Egypt, and they were at the
16:17:48 12 place -- it's called Alhussin Mosque area,
16:17:55 13 A-l-h-u-s-s-i-n, which is next to Al Azhar, A-l
16:18:11 14 A-z-h-a-r.

16:18:16 15 I took them from that place to a place
16:18:21 16 called Al Madar, A-l M-a-a-d-r, which is known very well
16:18:32 17 in Egypt that has no radical Muslims over there. It's
16:18:39 18 a very nice place. I took them from the most dangerous
16:18:45 19 area that they could meet people in Egypt to the most
16:18:52 20 safe area in Egypt, which is Al Madar. It's in Cairo.
16:18:58 21 And I kept asking them for the lady that they have met
16:19:03 22 in Egypt, to report it to the authority over there.
16:19:08 23 But they kept denying it. They kept denying for me to
16:19:15 24 meet her. And I was stopped in the airport by the
16:19:21 25 Egyptian police or the Secret Service, and I spent

16:19:25 1 almost three hours with them asking me questions.
16:19:33 2 Unfortunately, I did not tell them about Zubair and
16:19:35 3 Khaleel because I didn't have any information about that
16:19:38 4 lady that they alleged to go and meet over there.

16:19:42 5 Your Honor, I do not want to take too much
16:19:44 6 of your time or everybody's time. But I came from an
16:19:50 7 honorable family; loving, caring family. And we had a
16:19:58 8 lot of disputes sometimes because of my love for this
16:20:04 9 country. Your Honor, you said earlier that you wanted
16:20:08 10 to send a message to the people. And I hope, no
16:20:17 11 disrespect to the Court, that you don't send the message
16:20:19 12 to the people that there is no more freedom of speech in
16:20:25 13 America. My sister has told you that she is too scared
16:20:31 14 to talk about politics or policies. As matter of fact,
16:20:38 15 she was scared to come down here to Ohio. And I don't
16:20:41 16 know what convinced her to come down here. Maybe my
16:20:44 17 brother, he did so. My brother told me that he doesn't
16:20:48 18 talk politics because back there, we don't have that
16:20:54 19 freedom. And if you send the message to the people
16:21:01 20 that we do not have the freedom of speech, I don't know
16:21:04 21 what to believe ever. I came to America because of the
16:21:07 22 freedom, because of the Constitution. The government
16:21:12 23 here, they're trying to devalue the Constitution rather
16:21:16 24 than --

16:21:17 25 THE COURT: They're trying to what?

16:21:22 1 THE DEFENDANT: Demolish the Constitution
16:21:24 2 rather than telling the people, yes, we have a
16:21:27 3 Constitution. We have the first amendment rights that
16:21:30 4 you can watch anything you want; you can talk about the
16:21:35 5 government.

16:21:37 6 It remind me of a story that I was told
16:21:41 7 about President Jimmy Carter when he went to Russia.
16:21:46 8 And he told the Russian prisoners: I'm proud of
16:21:53 9 America, that anybody could come and stand in front of
16:21:56 10 the White House and say, Mr. President, you are wrong.
16:22:00 11 I disagree with you. I disagree with America. And
16:22:05 12 the president of Russia said, Oh, we have the same
16:22:09 13 thing, the same freedom. He said, What is it? He
16:22:12 14 said, Anybody could come and stand in front of the
16:22:15 15 Kremlin and say, I disagree with America. I don't like
16:22:21 16 America. I disagree with you, President.

16:22:26 17 Have we come to this stage, Your Honor, that
16:22:28 18 I cannot say, George Bush, you are wrong; George Bush,
16:22:32 19 you are sending our kids, our daughters, our sons to a
16:22:37 20 war that doesn't -- we don't believe in there? Is that
16:22:43 21 my crime, Your Honor, that I disagree with the
16:22:46 22 government? If I disagree with the government, that
16:22:48 23 does not mean that I don't love America. I love
16:22:52 24 America. And that's why I am here.

16:22:58 25 Your Honor, you said justification but not

16:23:03 1 greater than necessary. I have suffered a lot. Four
16:23:07 2 years. Four years away from my children. Four years
16:23:22 3 away from my family, my loved ones. One of my
16:23:34 4 daughters, she said to me the other day, Dad, I lost
16:23:41 5 security in my life.

16:23:49 6 Thank you, Your Honor.

16:23:56 7 THE COURT: Mr. Getz, if you have a few
16:23:58 8 words, and then I'll hear from Mr. Hartman again.

16:24:01 9 MR. GETZ: Mr. Sofer would like to make some
16:24:07 10 remarks. With the Court's indulgence, I would like to
16:24:10 11 have Mr. Sofer address the Court. Then I do have some
16:24:13 12 follow-up. Unfortunately I feel compelled to have to
16:24:17 13 present -- to counter some of the misrepresentations
16:24:20 14 that have been made in the past hour or so. Thank you.

16:24:56 15 THE COURT: Mr. Sofer.

16:24:57 16 MR. SOFER: Your Honor, I appreciate the
16:24:58 17 opportunity to speak to the Court. I did prevail upon
16:25:02 18 Mr. Getz as I tried to sit on my hands listening to Mr.
16:25:06 19 Hartman and now Mr. El-Hindi. I feel compelled to
16:25:10 20 stand up and try as best as I can in the very short
16:25:14 21 period of time we have to set this record straight. As
16:25:18 22 I was sitting back there listening to this, all I could
16:25:21 23 think of, Judge, is, Thank goodness we had a smart,
16:25:26 24 intelligent, hard-working jury in this case, or we would
16:25:30 25 never have even gotten to this point. Mr. Hartman's

16:25:35 1 statement was the third bite at the same apple, Your
16:25:39 2 Honor. His opening statement -- it all sounds great.
16:25:42 3 It sounded great during his opening statement. It got
16:25:45 4 a lot worse after all the evidence came in. The jury
16:25:48 5 didn't buy it on his closing statement. And now he's
16:25:51 6 trying with the Court, Judge. It is an absolute
16:25:57 7 distortion of this record. And unless Your Honor will
16:25:59 8 say to us now that you are not accepting much of the
16:26:04 9 factual statements that he made, I think we have no
16:26:06 10 other choice to do something which we did not want to do
16:26:11 11 today and tried not to do, which is go back and
16:26:14 12 relitigate all this stuff one more time. But this
16:26:17 13 notion that Marwan El-Hindi didn't recruit Zubair and
16:26:21 14 Khaleel Ahmed is absolutely belied by the evidence, and
16:26:26 15 we have tape after tape after tape which shows this.
16:26:29 16 Again, a sentencing proceeding, Your Honor, the
16:26:32 17 government submits is not about relitigating the guilt
16:26:34 18 or innocence. And I would submit to you that 95
16:26:37 19 percent of what we've heard here this afternoon is
16:26:42 20 essential that. We can only hope that Your Honor's
16:26:45 21 recollection of the record is good enough, unless we
16:26:49 22 augment it now, so that you won't make a decision based
16:26:53 23 on what we consider to be massive distortions. I will
16:26:56 24 say this: I'm not from Toledo, Judge, but thank
16:27:00 25 goodness those 12 people who were up there were as hard

16:27:03 1 working as they were and were able to go through all of
16:27:07 2 this evidence and see through this because it is just
16:27:10 3 distortion. And I don't know what to say to the Court
16:27:14 4 other than I hope you'll give us either an opportunity
16:27:17 5 to spend the next however many minutes or hours
16:27:19 6 rebutting it because, for the third time, I might add,
16:27:25 7 or if you tell us to sit down, I won't hear from you,
16:27:30 8 then that's what we'll do, but I think it would be a
16:27:33 9 travesty of justice under the circumstances, Judge. I
16:27:35 10 haven't really said these kind of things to you before.

16:27:38 11 THE COURT: So that whatever I decide you're
16:27:42 12 confident that you have the chance to, as you say, set
16:27:44 13 the record straight, why don't you briefly touch upon at
16:27:49 14 least at that aspect of what you believe the record
16:27:52 15 would show.

16:27:53 16 MR. SOFER: With Your Honor's indulgence, I'm
16:27:56 17 not going to do that; Mr. Getz will do that. That's
16:28:00 18 what he and Mr. Herdman are here to do. I will say a
16:28:04 19 couple quick things, then I will sit down.

16:28:08 20 Your Honor said some things which really --
16:28:11 21 everyone's trying to figure out in part or at least
16:28:15 22 ascribe the motivations for why it is the government did
16:28:17 23 what it did in this case. I don't think this is a --
16:28:20 24 should be any kind of particularly complex or difficult
16:28:23 25 issue. Your Honor said it: The stakes in these cases

16:28:30 1 are incredibly high. The seriousness of these crimes
16:28:34 2 is so significant. That's why we have the conspiracy
16:28:38 3 laws. Somehow during the last two days conspiracy has
16:28:43 4 suddenly been turned into some evil word. But this
16:28:48 5 statute was passed by the Congress a long time ago.

16:28:51 6 THE COURT: I would have thought I made my
16:28:53 7 understanding of that clear during my conversations with
16:28:57 8 Mr. Hartman.

16:28:58 9 MR. SOFER: I understand, Your Honor. I'm
16:29:00 10 not trying to say Your Honor doesn't think it, but
16:29:03 11 that's the way it's being portrayed by the defense.

16:29:07 12 THE COURT: For better or worse I have the
16:29:09 13 last word ON that. I tried to formulate an
16:29:12 14 understanding of both the nature of the investigation in
16:29:16 15 this case, which I referred to as casting a net and
16:29:22 16 really not knowing whether you get minnows or sharks or
16:29:26 17 anything at all. Because as I said, Mr. Sofer,
16:29:35 18 conspiracies to commit terroristic acts are as difficult
16:29:46 19 to detect as anything.

16:29:49 20 MR. SOFER: Perhaps more, Your Honor.

16:29:51 21 THE COURT: I understand. But my point is
16:29:52 22 you have a drug conspiracy or Medicare fraud conspiracy,
16:30:00 23 the kinds of conspiracies that courts more routinely and
16:30:04 24 regularly see. Well, there's some conduct that is
16:30:08 25 occurring, quote, in the open, whether it is a

16:30:14 1 submission of faith, false bills through Medicare which
16:30:23 2 have computer programs that check billing practices and
16:30:26 3 so forth; or whether it is police officers patrolling a
16:30:31 4 beat in, quote, high drug areas. There's something
16:30:36 5 above the surface. And that may be so in the case of
16:30:46 6 some conspiracies where people want to cause harm
16:30:51 7 through acts of terrorism.

16:30:54 8 MR. SOFER: But the government can't be sure
16:30:59 9 that's always the way it is and whether --

16:31:05 10 THE COURT: If I may. And whether viewed
16:31:09 11 from one perspective, what the government did in terms
16:31:15 12 of sending Mr. Griffin out into the neighborhood, as it
16:31:19 13 were, to see what he might uncover and then overseeing
16:31:23 14 what he was doing and what he was saying, taping -- I
16:31:32 15 think it was Agent Coats in the car, and he's getting
16:31:36 16 instruction. It's very clear Agent Coats has been well
16:31:40 17 instructed in terms of what constitutes inducement in a
16:31:43 18 sense as opposed to what constitutes entrapment; what
16:31:47 19 constitutes putting a little bait on the hook, and what
16:31:52 20 constitutes something more. So all I'm saying, I'm
16:31:58 21 trying to communicate to you, and I also understand that
16:32:04 22 in a hackney phrase, I -- at least I tried to project in
16:32:10 23 my discussion with Mr. Hartman the kind of message that
16:32:13 24 the government wants. And I disagree with Mr. El-Hindi
16:32:16 25 that the government is prosecuting speech. It's not

16:32:22 1 prosecuting speech. The jury might have found that it
16:32:25 2 was, but it didn't. And we have the convictions. And
16:32:32 3 that's where we are. And interpreting what it is the
16:32:35 4 government wants when it asks for the most drastic of
16:32:40 5 all possible penalties and trying to understand what the
16:32:43 6 government is trying to accomplish after the expenditure
16:32:47 7 of the resources that it has expended, I tried to
16:32:52 8 formulate that understanding, and in light of that
16:32:59 9 understanding in terms of altering the public deterrent
16:33:03 10 function, a sentence that accomplishes that objective in
16:33:07 11 light of what the government believes must be
16:33:10 12 accomplished.

16:33:12 13 MR. SOFER: Judge, I didn't mean by any of
16:33:14 14 my statements to infer anything else from the Court, but
16:33:17 15 I'm trying to respond to what counsel said. I want
16:33:21 16 this record to be complete. I hope you'll let us do
16:33:24 17 that for fear on our part that it's the argument that we
16:33:26 18 think of tonight, and you impose a sentence, and we wake
16:33:30 19 up in the middle of the night and say, Oh, my goodness,
16:33:33 20 he didn't realize this, or we failed to explain that.
16:33:36 21 We just can't let that happen. And I hope you'll
16:33:39 22 indulge us.

16:33:40 23 THE COURT: Sure. I'm not sure for how
16:33:42 24 long.

16:33:44 25 MR. SOFER: I understand, Judge. We

16:33:47 1 understand the late hour. We're prepared to stay here
16:33:50 2 as long as we can. We have to rely on the Court's
16:33:53 3 recollection of much of this record. We can't
16:33:56 4 relitigate this case. It's why we came in here the way
16:33:59 5 we did. I understand we took some hours, but we didn't
16:34:02 6 come in here and give a nine and a half hour summation.
16:34:04 7 We really didn't want to do that again. But given the
16:34:07 8 things -- Mr. Hartman came in here; I've heard this
16:34:10 9 before. I heard it before from Mr. Hartman, now I got
16:34:15 10 to hear it from Mr. El-Hindi.

16:34:16 11 THE COURT: I understand that. I've
16:34:19 12 already overruled the motion for a new trial challenged
16:34:23 13 on the sufficiency of the evidence.

16:34:25 14 MR. SOFER: You said something very
16:34:27 15 important. Again, the record should show we disagree
16:34:29 16 with Your Honor about whether this is a terrorism case
16:34:32 17 or not, but I'm not going to argue that with the Court,
16:34:36 18 whether it's a big T or little T. What matters are the
16:34:39 19 statutes involved here. Not a cultural issues, not
16:34:42 20 what's going on necessarily in the world. It's a
16:34:44 21 question of whether or not people have violated U.S.
16:34:48 22 law, U.S. statutes, and what that means. And again,
16:34:51 23 just for the record, I know Your Honor knows this, but
16:34:53 24 based on the record that's made here today, I want to
16:34:56 25 make sure this is clear. It's the object crimes of

16:34:59 1 these conspiracies that makes this such a serious case.
16:35:05 2 There is a federal crime of conspiracy. It's found, I
16:35:09 3 think, 18 U.S.C., 371. That's not what's charged here.
16:35:14 4 These are particular statutes which have particular
16:35:16 5 object crimes.

16:35:17 6 THE COURT: 18 U.S. Code 1 or 2, whatever it
16:35:22 7 is.

16:35:25 8 MR. SOFER: It's very important to us
16:35:26 9 because Your Honor is right, it is very important to the
16:35:29 10 government of the United States, and I believe very
16:35:31 11 important to the people of the United States more
16:35:33 12 importantly than the government of the United States
16:35:35 13 that a message be sent here, the correct message. The
16:35:39 14 object crimes here were conspiring to -- this is what
16:35:43 15 the jury found. This is not me saying this per se.
16:35:46 16 The jury already found this after a lengthy review of a
16:35:50 17 lot of evidence, and a full and fair opportunity for
16:35:53 18 every one of these defense attorneys to get up here and
16:35:55 19 say all the things that they did with all the resources
16:35:58 20 that they had. The first crime was conspiracy to kill
16:36:03 21 or maim people overseas. This jury actually
16:36:05 22 specifically found that these men conspired to kill
16:36:08 23 people including Marwan El-Hindi, that he conspired to
16:36:11 24 kill people. He gets up here and says, just like Amawi
16:36:14 25 did, that he was framed, basically. That's not

16:36:17 1 mitigation, Judge. A lot of courts would look at that
16:36:20 2 and be outraged.

16:36:23 3 THE COURT: I rethought this in the course
16:36:25 4 of overruling the motion for a new trial -- motions,
16:36:30 5 plural.

16:36:31 6 MR. SOFER: That's the first crime.

16:36:32 7 The second was providing material support in
16:36:35 8 order to kill U.S. citizens overseas. I am
16:36:41 9 paraphrasing that statute; I have not done it perfectly.

16:36:45 10 The last one is providing materials that
16:36:49 11 relate to explosives -- I'm paraphrasing the statute in
16:36:53 12 ordinary words -- in order to further a federal crime of
16:36:56 13 violence. That was to kill Americans overseas.

16:37:02 14 Now, I recognize that this Court is not
16:37:04 15 going to give a life sentence to this man. We all do, I
16:37:08 16 think. That's not a question. We disagree with that.
16:37:10 17 That's okay. That's part of the way the system works.
16:37:13 18 But Your Honor has already moved on that chart quite a
16:37:20 19 long ways.

16:37:20 20 THE COURT: I understand. Clearly.

16:37:25 21 MR. SOFER: And the relative position of
16:37:27 22 these defendants, which we do not maintain they're the
16:37:30 23 same. We're not saying, Judge, he's a terrorist, he's a
16:37:34 24 terrorist, he's a terrorist; throw theme all in jail for
16:37:36 25 the rest of their lives. We tried to say the particular

16:37:39 1 things they've done in the case. We haven't exaggerated
16:37:42 2 and said they've done things they haven't done. We
16:37:44 3 haven't exaggerated and said they've done things the
16:37:47 4 jury didn't find they were guilty of. What we're
16:37:51 5 asking the Court to do is send the appropriate message,
16:37:54 6 not just to them, but to anybody else in this position.

16:37:59 7 THE COURT: I agree with that. The matter
16:38:01 8 of principal concern is public deterrence. Other
16:38:09 9 matters are of concern, and I'll address them. But at
16:38:13 10 the core of this -- at least that's my understanding.
16:38:16 11 If I'm wrong in that, correct me. I don't mean to
16:38:18 12 disregard the other factors. I'm looking beyond those,
16:38:24 13 quite candidly, to what the criminal law is all about
16:38:30 14 and what those who have thought about this a lot more
16:38:35 15 than any of us and whose thoughts I think generally
16:38:39 16 underlie our criminal statutes I think we are about.
16:38:48 17 So I hope the Court of Appeals -- in fact, I mentioned
16:38:53 18 those things. I understand I think I'm going beyond but
16:38:58 19 not around the guidelines in thinking about those as
16:39:02 20 well, those sort of more overarching issues.

16:39:06 21 MR. SOFER: My final appeal to the Court,
16:39:08 22 then I'll sit down, and we'll address these factual
16:39:12 23 issues. To the extent Your Honor has them, if you can
16:39:14 24 tell us what it is you're accepting --

16:39:17 25 THE COURT: I think it's in a fairly brief

16:39:20 1 way, you have an opportunity for rebuttal.

16:39:25 2 MR. SOFER: The last thing I'd say is, Judge,
16:39:27 3 there's been a huge amount of argument about the fact
16:39:30 4 that nothing was going to happen. And again, all I
16:39:35 5 would say is somehow during the course of all of this
16:39:40 6 discussion, it seems to me that we have turned the
16:39:46 7 system upside down.

16:39:49 8 THE COURT: I think I understand what you're
16:39:50 9 saying. And I think it's correct from this standpoint
16:39:56 10 to say what you said and are perhaps about to say, and
16:40:00 11 that is that one simply cannot say at all that but for
16:40:08 12 the aborting of this conspiracy when that occurred,
16:40:17 13 nobody can say nothing was going to happen. And I
16:40:21 14 don't think that's what the defendants are contending.

16:40:26 15 MR. GETZ: And I would submit to Your Honor
16:40:28 16 if this jury really believed that nothing was going to
16:40:31 17 happen, they would not have convicted these defendants.
16:40:33 18 And in some way it's subverting the jury's verdict to
16:40:38 19 say otherwise. Again, we recognize not a life
16:40:40 20 sentence. We recognize there are conspiracies, and
16:40:42 21 there are conspiracies. And we're not saying that, as
16:40:45 22 we said before, that we can point to a case where
16:40:47 23 exactly these facts happened and this is what you should
16:40:50 24 give. And we do believe life is appropriate. We
16:40:54 25 recognize and we accept the fact the Court has

16:40:56 1 deviated -- or that's the wrong word.

16:40:59 2 THE COURT: Varied.

16:41:01 3 MR. SOFER: -- has varied, which is well
16:41:02 4 within your power. And whether that ultimately becomes
16:41:05 5 an issue or not --

16:41:07 6 THE COURT: You may contend it's a deviant
16:41:09 7 variation.

16:41:10 8 MR. SOFER: It was not a Freudian slip, Your
16:41:12 9 Honor.

16:41:12 10 THE COURT: I understand.

16:41:16 11 MR. SOFER: All I'm saying, again, is you've
16:41:18 12 already moved down that sliding scale quite a bit in a
16:41:21 13 very significant way, and I just implore the Court to
16:41:25 14 think about that as you go through these next two
16:41:27 15 sentences.

16:41:28 16 THE COURT: I am. I know full well, I knew
16:41:33 17 sentencing Mr. Amawi in all likelihood, I couldn't be
16:41:36 18 certain, I'm not certain until it comes time for me to
16:41:41 19 pronounce sentence, but it's fair to look at that as a
16:41:44 20 ceiling in terms of time. And you're right, Mr. Amawi
16:41:49 21 was what, 29 years old, 28, life expectancy of 50 years.
16:41:58 22 Go from roughly 50 years to 20 is a very substantial
16:42:04 23 variance. I understand that.

16:42:07 24 MR. SOFER: Again, on a personal note I thank
16:42:10 25 you for giving us this time. I know you've been very

16:42:12 1 accommodating to both sides, and we much appreciate it.

16:42:16 2 THE COURT: Mr. Herdman or Mr. Getz?

16:42:19 3 MR. GETZ: Thank you, Your Honor. I do
16:42:23 4 want to start with --

16:42:25 5 THE COURT: Let me simply say, if you can
16:42:28 6 kind of keep it to ten minutes or less, because I'm
16:42:32 7 going to give Mr. Hartman the last word for about five
16:42:34 8 minutes. It's not a time clock or stopwatch. And I'm
16:42:39 9 not going to turn off the microphone if you go beyond.
16:42:45 10 But if you can hit the high points or low points,
16:42:50 11 whichever your viewpoint would be.

16:42:54 12 MR. GETZ: All right, Your Honor. I'll do
16:42:55 13 my best to try to trim it down. We will have to rely
16:42:58 14 all the more on the Court's recollection of some of
16:43:02 15 these instances.

16:43:07 16 THE COURT: Tell me what there is in the
16:43:08 17 record that would move me back to the, quote,
16:43:12 18 recruitment rather than simple responsibility. Also,
16:43:25 19 I'm pretty well convinced there's ample proof of the
16:43:29 20 Eckhlaas situation. Feel free to button that up a
16:43:34 21 little as well.

16:43:35 22 MR. GETZ: I'll start there then, Your
16:43:37 23 Honor, because that can be done very quickly. I'll
16:43:39 24 just bring to the Court's attention Joseph Corrigan's
16:43:43 25 testimony at trial. He was the FBI computer evidence

16:43:46 1 technician who specifically testified that in order to
16:43:49 2 get that cookie, you have to sign into the site. And
16:43:53 3 in order to do that, you have to use your password and
16:43:55 4 your user ID. And that was his testimony, very
16:43:58 5 clearly.

16:43:59 6 I would also remind the Court that that was
16:44:01 7 an Arabic website. So this idea somehow that Darren
16:44:04 8 Griffin would have been using the defendant's computer
16:44:07 9 and tapping into that website is just not to be
16:44:10 10 believed.

16:44:11 11 THE COURT: I listened to that testimony,
16:44:13 12 and candidly I didn't have -- and I listened to what
16:44:18 13 counsel said about it both before and today. I think
16:44:23 14 at least at this stage, and I will make a finding by a
16:44:28 15 preponderance of the evidence that that connection has
16:44:31 16 been established, and my sentence will reflect that
16:44:36 17 finding.

16:44:40 18 MR. GETZ: Thank you. Many of these things
16:44:41 19 are going to focus obviously on the Ahmeds because they
16:44:45 20 have become somewhat of a central focus, and a lot of
16:44:47 21 time was spent in addressing their connection to the
16:44:51 22 defendant and to his case. Mr. Hartman started by
16:44:55 23 basically suggesting that I had misrepresented
16:44:58 24 something. I think you brought it up twice.

16:45:01 25 THE COURT: I said to my law clerks, I never

16:45:03 1 like lawyers, especially lawyers as competent as those
16:45:07 2 in this case, to use the word "misstatement," and even
16:45:10 3 go further from there. I think it's more accurate for
16:45:12 4 any lawyer to say that his view or her view of what the
16:45:17 5 record shows differs. That's how I interpret what Mr.
16:45:23 6 Hartman was saying to me. He's not attributing to you
16:45:26 7 any kind of inappropriate misconduct.

16:45:30 8 MR. GETZ: I understand, Your Honor.

16:45:31 9 THE COURT: It's still, you have a right to
16:45:34 10 correct it and say, Wait a minute, Judge, our view is
16:45:37 11 different.

16:45:38 12 MR. GETZ: Your Honor, I don't think the
16:45:39 13 record needs corrected. I think the record, if
16:45:42 14 checked, you'll find what I said is exactly what the
16:45:44 15 evidence showed, which is that in that conversation the
16:45:48 16 defendant suggested calling Zubair and saying to him,
16:45:51 17 Zubair, Zubair, what's up? You with us or not?
16:45:57 18 Something to that effect. That is also referenced in
16:46:03 19 our memo with a specific link. So to the extent it was
16:46:07 20 misrepresented --

16:46:08 21 THE COURT: The first two words were Zubair,
16:46:12 22 not Bilal.

16:46:13 23 MR. GETZ: What is important is Mr. Hartman
16:46:15 24 never said that the statement wasn't made. What he
16:46:17 25 said was that he never said it to Zubair. And that I'm

16:46:20 1 saying, I never said he said it to Zubair, but it's a
16:46:23 2 distinction without a difference. What difference does
16:46:26 3 it make if he makes that statement to Darren Griffin
16:46:27 4 suggesting they call Zubair and say this, or if he
16:46:31 5 actually makes this call and says it to Zubair. I know
16:46:34 6 it may make a difference if no calls were ever made
16:46:37 7 between the defendant and the Ahmeds, but the evidence
16:46:40 8 showed that calls were made between them. And, in
16:46:44 9 fact, we have a clip. I could play it. It's from
16:46:47 10 October 8, 2004 where the defendant calls Khaleel Ahmed
16:46:50 11 and is urging them to come to Toledo for training.

16:46:59 12 THE COURT: Go ahead and play it.

16:47:01 13 MR. GETZ: I'm sorry?

16:47:01 14 THE COURT: Go ahead and play it.

16:47:12 15 (Audio played and transcript displayed.)

16:52:23 16 MR. GETZ: Now, Your Honor, we only heard,
16:52:25 17 of course, one side of that conversation.

16:52:28 18 MR. HARTMAN: Your Honor, I'm going to have
16:52:29 19 the same issue that I did at trial if we start playing
16:52:34 20 clips. Out of fairness --

16:52:40 21 MR. GETZ: Again, Your Honor, you heard
16:52:42 22 Darren Griffin's voice. He was present there. That's
16:52:44 23 how the recording was made. The argument, I suspect,
16:52:50 24 would be, Well, he's calling them to get them to come
16:52:54 25 for some kind of security guard training, that that's

16:52:57 1 what he believes that it is. Well, we just heard Mr.
16:53:00 2 Hartman telling this Court about how these two
16:53:03 3 individuals were fully formed terrorists. They're
16:53:06 4 capital T terrorists. That this defendant saved and
16:53:13 5 he's indicating he's some kind of hero for going and
16:53:17 6 saving them. Is it logical the defendant is then
16:53:19 7 calling them to get them involved in some kind of
16:53:22 8 legitimate training exercise? We know the evidence has
16:53:24 9 indicated very clearly that that was not the case and
16:53:27 10 that there's no way the defendant ever could have
16:53:29 11 believed that that was the case. The Court has already
16:53:32 12 made reference and we spoke earlier of the conversation
16:53:36 13 where at the February 16 meeting, Darren Griffin lays
16:53:42 14 all of this out about what the training is about and the
16:53:47 15 defendant saying, I understand. There's no
16:53:49 16 misunderstanding about what this training is. And he's
16:53:51 17 calling them trying to get them to come to Toledo.

16:53:53 18 THE COURT: When was this call?

16:53:54 19 MR. GETZ: It was October 8, 2004. This
16:54:00 20 would have been several months after the ICNA conference
16:54:04 21 when he first introduced them --

16:54:06 22 THE COURT: About three months.

16:54:07 23 MR. GETZ: -- to Darren Griffin. For the
16:54:09 24 record, we should identify that clip, just
16:54:16 25 SM90-69185747-10A-1.

16:54:25 1 I think it would be helpful to the Court to
16:54:27 2 very quickly remind the Court of what the timeline is of
16:54:30 3 the Ahmeds' involvement in this case. The Court will
16:54:32 4 recall that in May of 2004 the Ahmeds left to go to
16:54:39 5 Egypt to attempt to hook up with somebody and ultimately
16:54:43 6 engage in jihad in Afghanistan. The defendant is hired
16:54:49 7 by Zubair's father to go over and try to locate them.
16:54:53 8 They return in early June of 2004. The defendant stays
16:54:57 9 in Egypt a little while longer but also returns in June.
16:55:01 10 We have evidence, a call, June 23 of 2004, where the
16:55:07 11 defendant calls Darren and says he has two brothers that
16:55:12 12 want to train. They have a lot of energy. I think
16:55:14 13 the Court will recall that conversation.

16:55:18 14 June 29 of 2004, the defendant calls Darren
16:55:23 15 Griffin and says he's bringing two brothers to the
16:55:26 16 convention. We just heard Mr. Hartman say the
16:55:28 17 defendant didn't know that Darren Griffin was going to
16:55:31 18 be at that conference. Well, that's clearly not true.
16:55:33 19 This conversation indicates not only does he know that
16:55:38 20 Darren's going to be there, but he's telling him, I'm
16:55:41 21 bringing you two brothers who want to meet you, and I'm
16:55:44 22 bringing them to the convention. He then, in fact,
16:55:47 23 does that on July 3 of 2004. And, in fact, contrary to
16:55:51 24 what the defendant told the Court, Darren Griffin didn't
16:55:56 25 come down to their booth to see them. The evidence is

16:55:59 1 clear that he took them up to the booth where Darren
16:56:02 2 Griffin was working and introduced them.

16:56:06 3 The convention continued the next day on
16:56:08 4 July 4, 2004.

16:56:10 5 THE COURT: I remember that. That's when
16:56:12 6 the conversation occurred was on July 4.

16:56:16 7 MR. GETZ: That's correct. That's when he
16:56:17 8 tells Darren Griffin --

16:56:18 9 THE COURT: I remember that's what the
16:56:19 10 testimony was about on the first day.

16:56:22 11 MR. GETZ: That's correct, Your Honor. And
16:56:23 12 he tells Darren Griffin that the Ahmeds want to be
16:56:25 13 professional snipers during that meeting on July 4 of
16:56:30 14 '04. There was this discussion again about how they're
16:56:36 15 already fully formed terrorists as opposed to this
16:56:41 16 defendant.

16:56:41 17 And I think I even heard the words here
16:56:44 18 about how they couldn't be molded or they weren't clay.
16:56:47 19 Well, that's a direct contradiction to the defendant's
16:56:50 20 own words on July 15 of 2004 when he specifically tells
16:56:54 21 Darren Griffin, again in a recorded conversation, that
16:56:58 22 Zubair Ahmed and Khaleel Ahmed are, in fact, clay to be
16:57:03 23 molded. And that is how he looks at them.

16:57:07 24 October 8 of '04 is the telephone call that
16:57:11 25 we just saw.

16:57:15 1 Mr. Hartman indicated that during the course
16:57:18 2 of this time period the Ahmeds traveled to Toledo four
16:57:23 3 times. And we challenge that statement, and I
16:57:27 4 challenge it again saying, I don't know; I firmly
16:57:31 5 believe that is not in the record. And in stopping and
16:57:35 6 thinking about it, it's hard to identify a witness that
16:57:38 7 could have testified or put in any evidence of those
16:57:42 8 trips.

16:57:42 9 THE COURT: Well, I'm not sure. At the very
16:57:45 10 least that's neutral. I don't think it advances his
16:57:54 11 argument very far because it would seem to me that the
16:58:00 12 government would want to place them in Toledo as often
16:58:04 13 as possible. And in any event, they came here four
16:58:09 14 times; we don't know why one way or the other. I don't
16:58:14 15 think it matters because I cannot deduce anything on
16:58:19 16 which I can rely from that mere fact. So I think, as
16:58:26 17 I've done at least once, I'm going to disregard that
16:58:31 18 because to do otherwise would be speculative.

16:58:37 19 MR. GETZ: I'm going to skip over a number
16:58:38 20 of these clips, Your Honor. I would like to --

16:58:43 21 THE COURT: I think you canvassed, not
16:58:47 22 covered the waterfront, with regard to, quote,
16:58:50 23 recruitment, solicitation or responsibility. I'll hear
16:58:56 24 from Mr. Hartman, of course. But go ahead. Other
16:59:00 25 topics?

16:59:04 1 MR. GETZ: Your Honor, I would just suggest
16:59:06 2 there was a challenge to the term that I used in my
16:59:10 3 statement that the defendant in some way was a
16:59:13 4 facilitator as well as being a recruiter and a mentor.
16:59:16 5 And the question was asked by Mr. Hartman, what
16:59:19 6 facilitation? There was no facilitation here. And I
16:59:23 7 would just suggest to the court, taking the Ahmeds, who
16:59:27 8 we knew to be want-to-be terrorists and attempted
16:59:31 9 terrorists who were looking for training, looking for a
16:59:36 10 hookup, and actually taking them to meet with Darren
16:59:39 11 Griffin who he believed could be that hookup and provide
16:59:41 12 that training, that's facilitation, Your Honor.
16:59:45 13 Inviting them to training, calling them and trying to
16:59:47 14 get them to come to Toledo for it, that's facilitation.
16:59:51 15 Suggesting copying materials onto CDs taken to them
17:00:00 16 because they were unable to come to Toledo, I would
17:00:02 17 suggest that's all facilitation.

17:00:07 18 This notion that somehow the Ahmeds are
17:00:09 19 capital T terrorists but the defendants in this case are
17:00:13 20 not, only because the Ahmeds went to Egypt to attempt to
17:00:19 21 get hooked up, is just a ludicrous argument, Your Honor.
17:00:22 22 I think Mr. Hartman said they got on an airplane to meet
17:00:25 23 someone to put them on the battlefield. Defendants
17:00:29 24 Amawi, Mazloun, and El-Hindi, they had Darren Griffin
17:00:32 25 here to hook up with to provide them with that same kind

17:00:37 1 of a hookup, presumably for the same purposes, to get
17:00:40 2 the training, to get prepared for jihad. They didn't
17:00:42 3 have to travel to Egypt to do that. And the fact that
17:00:47 4 somehow the Ahmeds are worse because they travelled a
17:00:51 5 little bit further for the same thing, again, is just
17:00:55 6 not a logical notion. And of course this defendant is
17:00:58 7 the one who then hooked up the Ahmeds with Darren
17:01:02 8 Griffin, the same person who they had hooked themselves
17:01:06 9 up with. The government submits they're all capital T
17:01:10 10 terrorists, Your Honor.

17:01:15 11 The defendant stated to this Court in
17:01:18 12 regards to the conversation with Khaleel Ahmed, or
17:01:25 13 Khaleel and Zubair Ahmed at the convention that what was
17:01:28 14 supposedly stated to his remarks about that were false
17:01:33 15 and were made up by Darren Griffin. He said he didn't
17:01:37 16 even know what a .50 caliber machine gun is. Well,
17:01:40 17 that's belied by a specific recording where, in fact,
17:01:44 18 he's talking to Darren Griffin about Zubair's comments
17:01:49 19 about running with a .50 caliber machine gun. He talks
17:01:52 20 about like Rambo. He very clearly in the
17:01:58 21 conversation -- again, we can play the clip, but very
17:02:00 22 clearly from the conversation he knows what a .50
17:02:03 23 caliber machine gun is, and they're discussing it.

17:02:08 24 I want to conclude, Your Honor, also by
17:02:13 25 saying that or suggesting and raising the question of

17:02:18 1 this notion somehow that the defendant should get some
17:02:24 2 benefit because all that he is is a con man and running
17:02:27 3 illegal schemes and defrauding people, and somehow
17:02:31 4 that's a mitigating factor in this case.

17:02:33 5 THE COURT: No, I understand. There is a
17:02:36 6 separate sentence that has to be considered. I
17:02:39 7 understand that.

17:02:40 8 MR. GETZ: And to that point, Your Honor, I
17:02:42 9 know that there is a presumption that the sentences
17:02:44 10 should be concurrent when sentencing occurs on the same
17:02:48 11 day, but we would argue, Your Honor, it's only a
17:02:51 12 presumption, and again, we feel that this defendant
17:02:54 13 should not get the benefit of getting a concurrent
17:02:59 14 sentence for that case merely because that case was put
17:03:02 15 off.

17:03:02 16 THE COURT: I understand I have discretion
17:03:04 17 in that regard provided I explain myself adequately.

17:03:14 18 MR. GETZ: Again, going to just very quickly
17:03:16 19 the idea of some kind of comparison between the
17:03:20 20 sentences that the Ahmeds have agreed to receive and are
17:03:27 21 expected to receive as a result of their plea agreement,
17:03:30 22 and somehow that equates to or should be compared
17:03:34 23 somehow to the sentence in this case. I remind the
17:03:37 24 Court those Defendants pled guilty. Zubair Ahmed has
17:03:41 25 testified in two terrorism cases in Atlanta.

17:03:46 1 THE COURT: What were the names of the
17:03:51 2 defendants in those cases.

17:03:53 3 MR. GETZ: The Atlanta cases, Sadequee was
17:03:56 4 one of the defendants, and Syed Haris Ahmed was the
17:04:01 5 other.

17:04:04 6 Khaleel Ahmed has already surrendered
17:04:07 7 himself and begun serving jail time. They both fully
17:04:11 8 accept what they have done and accepted responsibility.
17:04:14 9 Frankly from our position to argue this defendant should
17:04:17 10 receive some kind of a sentence that comes anywhere
17:04:22 11 close to what those defendants are receiving after he's
17:04:26 12 placed the government in the position of having to prove
17:04:28 13 his guilt, even to this day standing up and telling the
17:04:31 14 Court in essence that he's not guilty and not accepting
17:04:35 15 responsibility, again, we don't believe that that would
17:04:38 16 be appropriate.

17:04:42 17 I would refer the Court again to its opinion
17:04:45 18 and order when it denied the motion, post-trial motion
17:04:49 19 for judgment of acquittal when it -- you listed out the
17:04:53 20 number of steps and actions that this defendant took
17:04:57 21 after that February 16, 2005 meeting. So this idea
17:05:02 22 again that somehow this surprise dinner meeting at the
17:05:09 23 defendant's home, that he was surprised by Darren
17:05:14 24 Griffin's speech, and then somehow didn't undertake any
17:05:23 25 activities after that and didn't do anything, well, the

17:05:27 1 Court found differently, and obviously so did the jury
17:05:31 2 from the evidence in this case.

17:05:44 3 THE COURT: What was the date of that? I
17:05:46 4 want to take a quick look at that.

17:05:48 5 MR. GETZ: The order or --

17:05:52 6 THE COURT: Or do you have a document
17:05:54 7 number, either way?

17:05:56 8 MR. GETZ: Document 951 filed May 15, 2009.
17:06:01 9 Specifically they're referring to pages 6 and 7.

17:06:08 10 THE COURT: 951?

17:06:12 11 MR. GETZ: 951, Your Honor.

17:06:59 12 THE COURT: Do you have a copy.

17:07:00 13 MR. GETZ: As stated at the commencement of
17:07:02 14 this hearing --

17:07:03 15 THE COURT: Do have you a copy of that?

17:07:05 16 MR. GETZ: I do Your Honor. If you don't
17:07:07 17 mind, I have highlighted these sections.

17:07:09 18 THE COURT: No problem.

17:07:17 19 Mr. Hartman, he's referring to page 6 of
17:07:22 20 my order.

17:07:23 21 MR. HARTMAN: Yeah.

17:07:48 22 THE COURT: Okay.

17:07:48 23 MR. GETZ: Your Honor, there was a statement
17:07:50 24 earlier, and maybe the Court made it, about this not
17:07:53 25 being like a bank robbery case, a bank robber is a bank

17:07:57 1 robber. But I believe the Court would most likely
17:08:01 2 agree with me even those cases are not always that
17:08:03 3 simple.

17:08:04 4 THE COURT: I agree. But in terms of
17:08:06 5 trying to understand the nature of the offense. Sure,
17:08:10 6 there are differences, all kinds of differences. And
17:08:15 7 there are thousands of cases, statistics, so on and so
17:08:23 8 forth. There are benchmarks; there are channel markers,
17:08:27 9 whatever metaphor you want to use. That's all.

17:08:30 10 MR. GETZ: I understand that, Your Honor.
17:08:31 11 It just occurred to me when we heard that as an
17:08:34 12 illustration, I was thinking three bank robbers that
17:08:37 13 agree together to rob a bank, well, it doesn't make
17:08:40 14 sense for them to pull this off successfully to all
17:08:43 15 three go in the bank and ask for the teller to give them
17:08:46 16 the money. It makes sense for somebody to wait in the
17:08:49 17 car; it makes sense for somebody to stand by the door
17:08:51 18 and be the lookout; it makes sense for somebody to go in
17:08:54 19 and demand the money. It doesn't make sense to treat
17:08:58 20 them differently. That's what conspiracy law is also
17:09:01 21 about. I think the terminology has been used in
17:09:04 22 conspiracy, when you're in for a penny, you're in for a
17:09:06 23 pound. That's the case here. This defendant clearly
17:09:09 24 entered into this agreement; he knew what it was about.
17:09:12 25 He took actions to further these activities and to

17:09:17 1 further the goals. And as I attempted to point out at
17:09:23 2 the commencement of this hearing, his role may have been
17:09:25 3 somewhat different because he was -- he's not in the
17:09:29 4 same position as the other defendants. He's older; he
17:09:32 5 had children; he had a family; he had other things that
17:09:34 6 he was doing. But what he attempted to do and what the
17:09:37 7 evidence showed he attempted to do was use his
17:09:39 8 background, his experience, his skills that he brought
17:09:42 9 to this conspiracy to make it work. And to somehow say
17:09:47 10 that his role, his culpability is somewhat less because
17:09:51 11 those skills were different and because that background
17:09:54 12 is different, I submit to you is maybe not the best way
17:09:58 13 to look at his involvement.

17:10:01 14 THE COURT: What is the last date between
17:10:05 15 the date of arrest that you have that you believe the
17:10:09 16 record shows what I refer to as a contact or conduct of
17:10:15 17 consequence?

17:10:18 18 MR. GETZ: Well, Your Honor, we have the
17:10:19 19 phone calls a couple weeks prior, but we don't know, to
17:10:23 20 be honest and fair, we don't know the what the substance
17:10:25 21 of those were. So we can't say whether they're of
17:10:29 22 consequence. We know they existed. We know they're
17:10:32 23 still in touch with one another.

17:10:36 24 Just a moment, Your Honor.

17:10:37 25 THE COURT: Mr. Herdman, would you like to

17:10:42 1 ask a question?

17:10:43 2 MR. HERDMAN: I want to clear it with my
17:10:46 3 supervisor first.

17:10:48 4 MR. HARTMAN: Can you clarify what you think
17:10:49 5 is substantive?

17:10:50 6 THE COURT: I'll let them tell me.

17:10:52 7 MR. HARTMAN: Okay.

17:11:00 8 MR. GETZ: I can't pull that out immediately
17:11:04 9 other than to say in your order I believe you refer to
17:11:07 10 May 25 of 2005. And that may be. I would assume if we
17:11:13 11 had had something additional to supplement that with
17:11:18 12 we -- the Court would have had it.

17:11:19 13 THE COURT: In any event, for a fairly
17:11:21 14 lengthy period of time the government doesn't know what
17:11:24 15 Mr. El-Hindi was up to, good or bad or nothing at all?
17:11:30 16 That's all.

17:11:30 17 MR. GETZ: Again, some of that time Mr.
17:11:32 18 Griffin was overseas, and obviously other things were
17:11:36 19 going on. That is correct, Your Honor.

17:11:40 20 THE COURT: At least it seems to me sitting
17:11:42 21 here now I have to -- I cannot presume that anything --
17:11:51 22 I can't draw any adverse inferences. I need not also
17:11:54 23 and perhaps should not draw positive inferences. But
17:11:58 24 that's what the government's got; that's all it can
17:12:02 25 point to. That's what I'm asking. Anything further?

17:12:06 1 MR. HERDMAN: Your Honor, there is one. I
17:12:08 2 apologize. There was additional evidence that set out
17:12:10 3 that the defendant watched a video on his computer that
17:12:15 4 depicted the manufacture of black powder; you remember
17:12:18 5 that video. And that was in November of 2005. So
17:12:21 6 that was a little further along in that year. But that
17:12:23 7 was the same video that Mr. Amawi had on his Sony laptop
17:12:27 8 over in Jordan.

17:12:28 9 THE COURT: Okay. Mr. Hartman, a few
17:12:31 10 closing remarks.

17:12:32 11 MR. HARTMAN: Judge I have a couple very
17:12:34 12 quick points.

17:12:35 13 THE COURT: That's fine.

17:12:36 14 MR. HARTMAN: I don't want to -- literally
17:12:38 15 it will take about two minutes.

17:12:39 16 First, the phone call they played, did you
17:12:42 17 hear Darren Griffin in the background?

17:12:44 18 THE COURT: Uh-huh.

17:12:44 19 MR. HARTMAN: Ask him just if he can come
17:12:46 20 for day, just for a day.

17:12:51 21 July 4, we disagree about the evidence.

17:12:59 22 THE COURT: I do recall that going, quote,
17:13:03 23 upstairs to wherever Griffin was. If that's a mistake,
17:13:07 24 it's a mistake. That's my recollection.

17:13:13 25 MR. HARTMAN: Completely -- Mr. Sofer proved

17:13:18 1 my point. It's a cookie cutter approach. He got
17:13:22 2 convicted of this statute.

17:13:25 3 THE COURT: I understand. But my sentence
17:13:28 4 will reflect individualized consideration.

17:13:33 5 MR. HARTMAN: 18 U.S.C. 3553. You know it
17:13:36 6 better than I do.

17:13:38 7 And finally, Judge, there is one other group
17:13:49 8 of people that's listed to the message that you're going
17:13:53 9 to send, and that's the Muslim community here. Not
17:13:58 10 just here in Toledo, but here in this country and
17:14:01 11 everywhere else, and the message that you're going to
17:14:05 12 send is going to be an extension of the message that the
17:14:10 13 government sent, an extension of the message that the
17:14:15 14 Bush administration sent when they decided it's okay for
17:14:20 15 us to take a person and send them into your Mosque with
17:14:24 16 no suspicion whatsoever, and that's what they decided.
17:14:30 17 And we're going to look at you; we're going to keep tabs
17:14:33 18 on you, and we're going to go in and talk to you to see
17:14:36 19 if you bite. The Muslim community is watching this
17:14:39 20 case for that reason. The message that you send is
17:14:44 21 going to be heard very, very loudly by that community.
17:14:50 22 And I would just ask that you keep that in mind. Thank
17:14:50 23 you.

17:14:55 24 * * *

17:14:55 25 THE COURT: Eric, do have you a minute? I'm

17:14:57 1 going to take a very brief recess. Very brief.

17:23:50 2 (Recess taken.)

17:23:58 3 THE COURT: As a preliminary matter, I think
17:24:17 4 the government is correct in finding he wasn't merely
17:24:20 5 responsible for the Ahmed's involvement; he was, in
17:24:24 6 fact, recruiting them, as I would understand that term.
17:24:29 7 There will be that finding of fact in the case.

17:24:33 8 If you want to challenge that, I don't know
17:24:35 9 if that constitutes an objection, but again, I think
17:24:38 10 it's appropriate to tell you that's my finding. The
17:24:40 11 same with regard to the issue of solicitation.

17:24:46 12 I'm going to impose two sentences. My
17:24:51 13 understanding that the guideline range on the fraud
17:24:56 14 conviction, which was tried to me, there were seven
17:25:01 15 counts of conviction on that. I believe the guideline
17:25:03 16 range is a Criminal History Category I. And I cannot
17:25:08 17 recall the base offense level, but the guideline
17:25:10 18 range -- you better tell me what it was.

17:25:12 19 MS. SIZEMORE: It was a 15, Your Honor.

17:25:14 20 THE COURT: Is there any objection to those
17:25:17 21 findings relative to the applicable guideline? Do you
17:25:21 22 want to take a look at it?

17:25:23 23 MR. HARTMAN: Nothing additional.

17:25:25 24 MS. SIZEMORE: Your Honor, the guideline is
17:25:28 25 18 to 24 months.

17:25:48 1 THE COURT: I apologize. I should have
17:25:51 2 called it to your attention. I sort of focused on the
17:25:57 3 other conviction.

17:26:37 4 MR. GETZ: Your Honor, the government agrees
17:26:40 5 that offense level 15 is correct for the fraud offense,
17:26:42 6 and a Criminal History Category of I.

17:26:45 7 THE COURT: And then the guideline range is
17:26:48 8 18 to 24 months.

17:26:55 9 I'm going to impose a consecutive sentence
17:26:59 10 on the four counts of conviction, really that we've been
17:27:03 11 talking about, would be terms of 144 months as to each
17:27:09 12 to run concurrently.

17:27:11 13 As to the fraud convictions which were tried
17:27:14 14 to me, there will be a sentence of 18 months, and they
17:27:18 15 will run consecutively.

17:27:20 16 Is that the proper way to pronounce the
17:27:21 17 term?

17:27:27 18 MS. SIZEMORE: You were saying all the fraud
17:27:31 19 counts, you would like those to be run consecutively?

17:27:34 20 THE COURT: Right. As to that set of
17:27:36 21 convictions, the sentences -- the sentence will be 18
17:27:39 22 months. That sentence is to run consecutive to the
17:27:43 23 other sentences being imposed. And I'll go through and
17:27:47 24 explain my reasons after I pronounce sentence.

17:27:51 25 Pursuant to the Sentencing Reform Act of

17:27:54 1 1984 and U.S. Code Section 3553(a), it's the judgment of
17:27:59 2 this Court that the Defendant, Marwan Othman El-Hindi,
17:28:03 3 be an hereby is committed to the custody of the Bureau
17:28:06 4 of Prisons in case 3:06-CR-719-02 to be imprisoned for a
17:28:17 5 term of 144 months as to Count 1, 144 months as to each
17:28:26 6 of Counts 2, 5, and 6. Those sentences to run
17:28:30 7 concurrently. They represent variances. I will explain
17:28:36 8 my reasons.

17:28:37 9 Regarding case 3:07-CR-74-001, Defendant
17:28:44 10 Marwan Othman El-Hindi is hereby committed to the
17:28:47 11 custody of the Bureau of Prisons for a term of 18 months
17:28:55 12 each as to Counts 1, 2, 3, 4, 5, 6 and 7. Those terms
17:29:03 13 to run concurrently as to each other and consecutively
17:29:06 14 with regard to the 144-month term.

17:29:10 15 If my arithmetic is correct, that results in a
17:29:14 16 total of 162 months.

17:29:16 17 Upon release from imprisonment the defendant
17:29:18 18 shall be placed on supervised release for a life term as
17:29:21 19 to Counts 1 and 2; a term of three years to each of
17:29:24 20 Counts 5 and 6 in case number 3:06-CR-719-02. As to
17:29:34 21 case 3:07-CR-00074-001, the defendant shall be placed on
17:29:40 22 supervised release for a term of three years as to
17:29:42 23 Counts 1 through 7. Those terms, of course, will run
17:29:47 24 concurrently.

17:29:48 25 Within 72 hours of release from the custody of

17:29:50 1 the Bureau of Prisons, the defendant shall report in
17:29:52 2 person either to the U.S. Pretrial Service and Probation
17:29:55 3 Office in this district or the Probation Office in the
17:29:58 4 district into which he is released.

17:30:01 5 There is no fine; no fine will be imposed.

17:30:05 6 As to case 3:07CR00074-001, the defendant
17:30:09 7 shall pay restitution in the amount of \$20,000 to the
17:30:14 8 United States Department of Health and Human Services,
17:30:16 9 through the Clerk of the United States District Court.
17:30:18 10 Restitution is due and payable immediately.

17:30:21 11 The defendant shall pay 25 percent of his
17:30:23 12 gross income per month through the Federal Bureau of
17:30:26 13 Prisons Inmate Financial Responsibility Program. If a
17:30:28 14 restitution balance remains upon release from
17:30:31 15 imprisonment, payment is to commence no later than 60
17:30:34 16 days following release from imprisonment to his term of
17:30:38 17 supervised release.

17:30:38 18 The defendant shall pay a minimum of ten
17:30:41 19 percent of his gross monthly income during the term of
17:30:44 20 supervised release and thereafter as prescribed by law.
17:30:50 21 Notwithstanding establishment of the payment schedule,
17:30:53 22 nothing shall prohibit the United States from executing
17:30:55 23 or levying upon property of the defendant discovered
17:30:59 24 before or after the date of this judgment.

17:31:01 25 The defendant shall pay a special assessment

17:31:03 1 of \$1,100 which is due immediately and shall likewise be
17:31:08 2 taken from his prison earnings until satisfied.

17:31:11 3 While on supervision the defendant shall not
17:31:14 4 commit another federal, state, or local crime, shall not
17:31:17 5 illegally possess a controlled substance, shall comply
17:31:19 6 with the standard conditions adopted by this Court,
17:31:23 7 which he will be made aware when he begins to serve
17:31:26 8 supervision, and shall comply with the following special
17:31:28 9 conditions -- I see no reason to impose mandatory drug
17:31:33 10 testing. The defendant shall not possess a firearm,
17:31:36 11 destructive device, or dangerous weapon. He shall
17:31:38 12 submit his person, residence, place of business,
17:31:38 13 computer, or vehicle to warrantless search conducted and
17:31:41 14 controlled by the U.S. Probation Office at a reasonable
17:31:44 15 time and in a reasonable manner based upon reasonable
17:31:47 16 suspicion that he is in possession of contraband or
17:31:52 17 evidence of a violation of a condition of release.
17:31:54 18 Failure to commit to such a search may be grounds for
17:31:56 19 revocation. The defendant shall inform any other
17:31:58 20 residents that the premises is subject to search
17:32:01 21 pursuant to this condition.

17:32:02 22 The defendant shall while on supervised
17:32:05 23 release provide the probation officer with any and all
17:32:08 24 requested financial information promptly upon the upon
17:32:11 25 making such request.

17:32:12 1 While on supervised release the defendant
17:32:14 2 shall diligently seek to obtain and if he obtains
17:32:17 3 diligently seek to maintain lawful, gainful employment.
17:32:21 4 He shall cooperate in the collection of DNA as directed
17:32:25 5 by the Probation Office. He shall not associate with
17:32:29 6 any member of a threat group as defined for him in the
17:32:33 7 record by the probation officer.

17:32:38 8 I believe that my reasons are probably
17:32:44 9 discernable to any attentive reader of the transcript or
17:32:48 10 anybody that's been here this afternoon, or actually
17:32:51 11 throughout the entire course of these proceedings, but
17:32:54 12 to be made clear, I consider this to be a very serious
17:32:57 13 offense, and I believe that in light of the history and
17:33:04 14 characteristics of the offense, this is a sentence that
17:33:07 15 is necessary but not more than necessary under Section
17:33:16 16 3553(a). I believe and I hope that if the sentence,
17:33:22 17 when it becomes known to someone who understands all the
17:33:26 18 pertinent facts and circumstances, will promote respect
17:33:29 19 for the law. I believe that it is a just sentence.
17:33:33 20 As I've already indicated, I think the factor of
17:33:38 21 individual -- excuse me, the factor of public deterrence
17:33:41 22 is of primary concern and has been given that concern
17:33:47 23 and attention by me in trying to determine what is a
17:33:51 24 just but not unnecessary sentence to accomplish that
17:33:54 25 purpose.

17:33:59 1 I've tried to express off and on throughout
17:34:02 2 the afternoon my view of what the nature of the message
17:34:14 3 that is to be sent when a Court imposes a sentence under
17:34:19 4 circumstances and conditions such as these. To try to
17:34:26 5 reformulate or restate that one more time, the threat of
17:34:35 6 terroristic acts is real. I don't think anybody in
17:34:39 7 this country can doubt that. I don't think anybody in
17:34:42 8 the world can doubt that. Terrorism by its nature is a
17:34:48 9 crime that is conceived, plotted, planned, and executed
17:34:55 10 in the utmost secrecy. If it were not, it could not
17:34:59 11 succeed. That makes it particularly difficult to
17:35:04 12 detect and deter and defend against. It is in that
17:35:10 13 regard an act, when accomplished, that distinguishes it
17:35:16 14 from practically any other crime as defined would be
17:35:21 15 found within the federal criminal code. It is a crime
17:35:24 16 that threatens countless numbers of people and countless
17:35:33 17 numbers of locations with a substantial risk of injury
17:35:40 18 or death or destruction. And it is imperative that our
17:35:47 19 government and any government take all lawful and
17:35:51 20 reasonable steps available to it to try to detect, deter
17:35:58 21 and defend against the risk of terrorism. I think
17:36:01 22 that's what was done in this case.

17:36:05 23 I disagree with the contention that the
17:36:08 24 message that I am trying to send and the government
17:36:16 25 desires me to send and to be communicated and heard

17:36:23 1 chills the right to vigorous and robust exercise of all
17:36:28 2 of our First Amendment rights, be they the rights of
17:36:32 3 free speech, of association, or of religion. I think
17:36:36 4 that, though fuzzy as many lines are that the law seeks
17:36:41 5 to draw, nonetheless, there is a distinction between the
17:36:46 6 exercise of those rights in a lawful and productive
17:36:51 7 manner and way that is essential to the willing of a
17:36:56 8 robust and vital democratic society. I think there's a
17:37:00 9 line between that and the necessary function that that
17:37:03 10 kind of -- the exercise of those rights forms for the
17:37:11 11 wellbeing of us all and the conduct that led to the
17:37:15 12 conviction of these defendants. I do think the line was
17:37:20 13 crossed, and the jury properly found on the basis of
17:37:22 14 sufficient evidence that it was crossed. And that,
17:37:26 15 although I do not think that a sentence of this length
17:37:30 16 is necessary either to incapacitate or to deter Mr.
17:37:37 17 El-Hindi from further criminal conduct as to either of
17:37:40 18 these sets of crimes of which he stands convicted;
17:37:44 19 nonetheless, I think that it is appropriate for the
17:37:46 20 government to ask me and for me to respond to that
17:37:48 21 request to try to communicate through this sentence, and
17:37:53 22 I think this sentence does so, to those who might be
17:37:58 23 tempted to take their opposition to our government and
17:38:04 24 its policies, whatever those policies may be, whether
17:38:07 25 they're domestic policies or foreign policies, but for

17:38:13 1 those who might be tempted to take the first steps in
17:38:17 2 the path towards generating a risk of harm to our fellow
17:38:23 3 citizens or to anyone else, should understand that. To
17:38:28 4 use the metaphor that I referenced earlier, that this
17:38:33 5 sentence, I hope, serves as a signpost: Danger, warning
17:38:38 6 ahead. It's a minefield. You can't tell whether
17:38:45 7 there's one mine in a football field or whatever the
17:38:48 8 space may be or 1,000, but proceed from here with
17:38:54 9 caution.

17:38:55 10 And also I referenced and I know that it is
17:38:59 11 a cause of concern, just as it is an understandable
17:39:04 12 cause to be concerned that the government's efforts and
17:39:06 13 perhaps my own in pronouncing this sentence may have an
17:39:10 14 adverse effect upon the free exercise of First Amendment
17:39:15 15 Rights, I do not think it does, but I think that I can
17:39:19 16 understand how someone like Mr. El-Hindi's sister might
17:39:23 17 sense that concern. I don't think she should, but
17:39:27 18 clearly she does. But there is, I think, public
17:39:32 19 concern about the kinds of investigatory methods that
17:39:36 20 were employed in the case, the casting of a net not
17:39:39 21 knowing whether there are any fish in the sea or, if so,
17:39:42 22 again, to repeat the metaphor, whether they are minnows
17:39:47 23 or sharks. Nonetheless, given the nature of the risk
17:39:50 24 and of the threat and of the extent of that threat and
17:39:55 25 the consequences of a successful terroristic attack

17:40:00 1 wherever that might occur and against whomever it might
17:40:04 2 be directed, justifies our government in employing the
17:40:09 3 kinds of activities that it employed in this case, and
17:40:18 4 that it is necessary and proper for it to do so, at
17:40:21 5 least in my view. It is not a view that by any means
17:40:24 6 would be universally shared. It is necessary and
17:40:27 7 proper for it to do so because, as the government
17:40:31 8 mentioned in its sentencing memo, it must act promptly;
17:40:35 9 it must act swiftly. It must do so not just to detect
17:40:39 10 and defeat and to prevent the risk of an accomplished
17:40:45 11 terroristic act, but also to deter those who might be
17:40:50 12 inclined, as I say, to take those first steps and step
17:40:54 13 into the minefield.

17:40:57 14 I do think that this sentence, I hope,
17:40:59 15 serves as a publicly displayed and effective notice to
17:41:04 16 those who might be inclined to do as these defendants
17:41:08 17 did and to cross that line, that they will say -- that
17:41:13 18 they will be deterred, that they will exercise the
17:41:16 19 caution I think these defendants should have exercised
17:41:20 20 when Mr. Griffin first started talking about things that
17:41:23 21 he did and first held himself out to them as a resource
17:41:27 22 in the way that he did. I do not think that by posting
17:41:31 23 that sign or by encouraging people to give heed to it
17:41:35 24 that either I or the government of this country --
17:41:41 25 either that I am or the government of this country is

17:41:45 1 posting a sign or sending a message that will deter a
17:41:50 2 full and robust exercise of our First Amendment rights.
17:41:53 3 I do think it is a very important message to send. And
17:41:57 4 I think it's appropriate that the government has
17:41:59 5 undertaken to, through this prosecution, and through
17:42:02 6 others that apparently are on the way, to communicate
17:42:06 7 that message. To the extent that that causes
17:42:10 8 individuals who begin these conversations and start
17:42:13 9 thinking about these kind of acts to become worried when
17:42:16 10 somebody pops up, like Mr. Griffin did in the mosque
17:42:22 11 attended by these three defendants, and starts talking
17:42:24 12 the kind of talk that he did, that would also be my hope
17:42:30 13 that folks say, Wait a minute; who is this guy? Where
17:42:34 14 does he come from? What's he saying? And boy, I'd
17:42:38 15 better be careful because I may not be talking to a
17:42:41 16 compatriot. I may be talking to a turncoat. Again, I
17:42:46 17 think it's entirely appropriate that that concern under
17:42:51 18 the circumstances such as these where somebody starts
17:42:53 19 talking about violent and deadly acts, that for somebody
17:43:00 20 to act -- for a person to whom those statements are
17:43:04 21 being made, I think it makes sense to encourage people
17:43:08 22 who are hearing those statements to say to themselves,
17:43:11 23 Wait a minute; who are you? Maybe you are from the
17:43:17 24 Federal Bureau of Investigation, you are here from the
17:43:21 25 government, and you are not here to help. So as I say,

17:43:26 1 the principal foundation and basis upon which I impose
17:43:29 2 this sentence, which is both severe, particularly given
17:43:35 3 Mr. El-Hindi's age, but is also substantially more
17:43:39 4 lenient than the government has asked for, is the
17:43:45 5 interest of public deterrence and the effort to respond
17:43:49 6 to very serious and grave threats, the threat and the
17:43:53 7 welfare and wellbeing of all of us, including, as Mr.
17:43:56 8 El-Hindi said, his own children. I hope that that
17:44:03 9 purpose has been accomplished. I think if it has, then
17:44:06 10 this sentence has served a very fundamentally important
17:44:10 11 purpose of protecting the public.

17:44:12 12 With regard to personal rehabilitation,
17:44:14 13 education, and vocational requirements and needs, I
17:44:19 14 don't think that plays much of a role. Mr. El-Hindi
17:44:22 15 is, obviously, like Mr. Amawi, an intelligent,
17:44:26 16 well-educated, well-read, and thoughtful individual. I
17:44:31 17 don't think this sentence will in any practical way
17:44:36 18 serve that purpose.

17:44:37 19 Let me ask the government first whether I
17:44:42 20 have failed to consider the pertinent factors or
17:44:46 21 otherwise missed something or need to say something
17:44:52 22 further in that regard?

17:44:53 23 MR. GETZ: Your Honor, I don't believe so.
17:44:56 24 I don't know if the Court addressed the 3553 factor that
17:45:03 25 deals with education or vocational needs.

17:45:07 1 THE COURT: That's what I just said at the
17:45:09 2 end. I don't know if he's well-educated or not. I
17:45:12 3 can't recall. But I certainly think he is, whether
17:45:14 4 formally educated or not, many members of his family
17:45:18 5 are. He's obviously a well-read and well-educated
17:45:22 6 individual.

17:45:25 7 MR. GETZ: We believe it's been covered,
17:45:26 8 Your Honor.

17:45:29 9 MR. SOFER: Your Honor, one additional point.
17:45:30 10 Like the last sentencing, we'd like to preserve our
17:45:34 11 right to appeal the sentence based on the lack of
17:45:38 12 rationale under the 3553 factors to vary in the manner
17:45:42 13 and, more importantly, the extent to which the Court has
17:45:47 14 varied.

17:45:47 15 THE COURT: But have I failed to consider
17:45:50 16 any of the pertinent factors?

17:45:53 17 MR. SOFER: Again, I don't think Court has
17:45:55 18 failed to consider the factors. And I am not
17:45:58 19 announcing --

17:46:00 20 THE COURT: Let me say, my question is:
17:46:03 21 Regardless of how well you think I've connected the
17:46:08 22 dots, I have at least connected the dots? I don't want
17:46:12 23 to be in a situation where the Court comes back and
17:46:15 24 said, Judge, you didn't think about this. As I
17:46:17 25 understand it, I considered the nature and circumstance

17:46:20 1 of the offense; I believe I have. It encompasses the
17:46:24 2 history and characteristics; I believe I have. The need
17:46:26 3 for the sentence being imposed, in light of the
17:46:28 4 seriousness of the offense, to provide respect for the
17:46:33 5 law, provide a just sentence, provided a deterrence,
17:46:36 6 both individual and public, protect the public, and
17:46:39 7 provide the defendant with educational and or vocational
17:46:44 8 training or medical care.

17:46:47 9 MR. SOFER: Certainly that --

17:46:50 10 THE COURT: Let me put it this way. Have I
17:46:52 11 properly recited the facts?

17:46:54 12 MR. SOFER: Yes, Your Honor.

17:46:56 13 THE COURT: I understand. No one is happy
17:46:57 14 with the application, I'm sure.

17:46:59 15 Mr. Hartman, have I properly taken into --
17:47:03 16 have I taken into consideration the factors that I need
17:47:06 17 to take into consideration?

17:47:08 18 MR. HARTMAN: I believe you have, Judge.

17:47:10 19 THE COURT: Does any party have any
17:47:12 20 objection to any part of the proceedings that hasn't
17:47:15 21 previously been made?

17:47:18 22 MR. BOSS: May we have a moment, Judge?

17:47:20 23 THE COURT: Of course.

17:47:38 24 (Discussion had off the record.)

17:47:38 25 THE COURT: I do know I have that motion and

17:47:41 1 recommendation. I will turn to that in a moment.

17:47:46 2 So any objection to any part of the
17:47:47 3 proceedings? Take your time.

17:47:50 4 MR. HARTMAN: Thank you.

17:48:29 5 (Discussion had off the record.)

17:48:29 6 MR. HARTMAN: Your Honor, for purposes of
17:48:31 7 the record, we would renew our previous objections to
17:48:33 8 the extent we haven't done that, just to make sure.

17:48:37 9 THE COURT: I deem your objections to have
17:48:39 10 been made, heard, taken into consideration, and
17:48:42 11 overruled. To the extent that I didn't do so
17:48:45 12 expressly, I deem all the previously made objections
17:48:48 13 renewed and overruled.

17:48:51 14 Let me ask this: There's a pending motion
17:48:54 15 that Mr. El-Hindi serve the balance of his term -- I
17:49:00 16 obviously expect and recommend, certainly, that he be
17:49:03 17 given full credit for the time, three years and eight
17:49:06 18 months, he spent in custody, if I count correctly,
17:49:12 19 particularly if his behavior continues to be exemplary.
17:49:15 20 About nine years left to go? Whatever. About.

17:49:20 21 MR. HARTMAN: I think maybe a little less
17:49:23 22 than that with good time. 8.1 with the halfway house.

17:49:29 23 THE COURT: If you want to make the same
17:49:31 24 motion that Mr. Amawi's counsel did, halfway house
17:49:33 25 placement under the Safety Valve --

17:49:36 1 MR. BOSS: We do.

17:49:37 2 THE COURT: For the same reasons stated in
17:49:39 3 response to that motion, that will be overruled. I'm
17:49:42 4 going to leave that to the Bureau of Prisons.

17:49:45 5 MR. HARTMAN: I understand.

17:49:51 6 THE COURT: In what locale does Mr. El-Hindi
17:49:55 7 presently desire to serve the balance of the term? If
17:50:16 8 you want to consult with him for a bit.

17:50:18 9 MR. HARTMAN: Your Honor, we have two
17:50:20 10 issues; one is staying close to this general area for
17:50:24 11 the purposes of appeal so he's available, and the
17:50:29 12 balance of the term we would request a facility as close
17:50:32 13 to Syracuse, New York as possible.

17:50:35 14 THE COURT: I'm not sure I can make a split
17:50:38 15 recommendation. And certainly, in this kind of case,
17:50:44 16 whatever recommendation I make might carry less weight.
17:50:48 17 But let me say this: in light of the references that
17:50:51 18 have been made to Mr. El-Hindi's conduct while in
17:50:56 19 detention, both during the period of isolation, solitary
17:51:01 20 confinement, de minimus control, whatever you want to
17:51:06 21 call it, and also the period of incarceration in the
17:51:11 22 federal detention center, I would hope that the Bureau
17:51:14 23 of Prisons would look past sort of automatically -- not
17:51:17 24 automatically, but the applied criminal history category
17:51:19 25 and the guideline sentence and say, wait a minute; let's

17:51:23 1 look at this man and see if it's safe for the rest of
17:51:26 2 the inmate population for him to be in something other
17:51:29 3 than a maximum security facility or whatever.
17:51:33 4 Particularly with regard to the period which he'll be
17:51:37 5 working on appeal, I would hope that the Bureau of
17:51:41 6 Prisons will accommodate you and ultimately the interest
17:51:43 7 of all of us to see to it that what we have to pay you
17:51:47 8 to accomplish that are diminished. But also simply to
17:51:51 9 enable you to more effectively and efficiently represent
17:51:54 10 your client. I have absolutely no control over that.
17:51:57 11 But I make that recommendation willingly.

17:52:00 12 I also acknowledge the Bureau, so far as I'm
17:52:03 13 aware, has undertaken to accommodate Mr. El-Hindi as far
17:52:08 14 as I'm aware. It's in an entirely different situation
17:52:10 15 than Mr. Amawi. He never protested coming to court
17:52:13 16 that I can recall.

17:52:14 17 MR. HARTMAN: I would ask that the Court
17:52:16 18 recommend that he stay at Milan, just that simply, at
17:52:20 19 the Federal Correction Center in Milan.

17:52:23 20 THE COURT: I have no idea the extent to
17:52:26 21 which when somebody's in custody whether they take that
17:52:29 22 into consideration and they make their transfers and all
17:52:32 23 of that.

17:52:34 24 MR. SOFER: My understanding from talking to
17:52:36 25 the marshals is once they're in BOP custody, as you have

17:52:40 1 said many times, they run their facilities; they run
17:52:43 2 them according to their rules and regulations. They
17:52:46 3 certainly, I'm sure, would pay attention to a District
17:52:49 4 Court's recommendation. My understanding from talking
17:52:51 5 to the marshals is nobody has ever been afforded this
17:52:54 6 kind of particular accommodation here in Toledo.

17:52:59 7 MR. HARTMAN: But there isn't a rule or
17:53:01 8 statute.

17:53:02 9 THE COURT: I will say I have a hunch that
17:53:04 10 they haven't had the time that they've had to become
17:53:07 11 acquainted with Mr. El-Hindi that they have. But it's
17:53:11 12 up to them. Okay. I believe I've granted your motion
17:53:16 13 to express my views in that regard.

17:53:19 14 Mr. El-Hindi, you have the absolute right to
17:53:21 15 appeal both your conviction and your sentence. I
17:53:24 16 recommend that you undertake to do so. Talk it over
17:53:27 17 with Mr. Hartman and Mr. Boss. If grounds to appeal
17:53:31 18 appear to exist, have him file a notice of appeal on
17:53:34 19 your behalf within ten days. If you fail to file a
17:53:37 20 timely notice of appeal, you will lose forever whatever
17:53:41 21 right you would otherwise have to challenge either your
17:53:43 22 conviction or sentence by way of direct appeal,
17:53:46 23 postconviction relief, habeas corpus, or otherwise. Do
17:53:49 24 you understand?

17:53:51 25 THE DEFENDANT: Yes, I do.

17:53:51 1 THE COURT: As I say, you have the absolute
17:53:53 2 right to be represented by counsel on appeal. In
17:53:57 3 consultation with your attorneys it's up to you whether
17:54:00 4 your current attorneys, whether you want them to
17:54:02 5 continue to represent you, or you would like to have
17:54:05 6 somebody take their place. That's a judgment for you
17:54:07 7 to make. You alone can determine whom you want to have
17:54:11 8 represent you. I think, quite candidly, you've been
17:54:16 9 extraordinarily well represented by both Mr. Hartman and
17:54:19 10 Mr. Boss throughout the entire course of these
17:54:21 11 proceedings. That's not to deter you from making any
17:54:24 12 judgment. And Mr. El-Kamhawy, of course. But I want
17:54:28 13 to make clear if you want somebody else to represent
17:54:32 14 you, let them know, and they will see to it that that
17:54:35 15 happens.

17:54:35 16 Anything further from the government?

17:54:38 17 MR. HERDMAN: No, Your Honor.

17:54:39 18 MR. HARTMAN: No, Your Honor.

17:54:41 19 THE COURT: That will conclude this
17:54:42 20 proceeding.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s Tracy L. Spore_____

Tracy L. Spore, RMR, CRR

Date

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